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# ENVIRONMENTAL ASSESSMENT BOARD

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VOLUME: 263

DATE: Wednesday, November 21, 1990

BEFORE:

A. KOVEN

Chairman

E. MARTEL

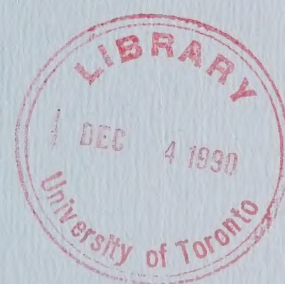
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.


-----  
Hearing held at the offices of the Ontario  
Highway Transport Board, Britannica Building,  
151 Bloor Street West, 10th Floor, Toronto,  
Ontario, on Wednesday, November 21st, 1990,  
commencing at 9:00 a.m.

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VOLUME 263

BEFORE:

MRS. ANNE KOVEN  
MR. ELIE MARTEL

Chairman  
Member



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I N D E X   O F   P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
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I N D E X   O F   E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1585	24-page Article entitled: Strip Cutting in Shallow Soiled Upland Black Spruce near Nipigon, Ontario, Regeneration in the First Study Area by Jeglum, publication of Great Lakes Forest Research Centre, Canadian Forestry Service, Department of the Environment, 1982.	47483
1586	19-page article entitled: Black Spruce Regeneration Trials Near Nipigon, Ontario, Planting versus Seeding, Lowlands versus Uplands, Clearcut versus Strip Cut, by Wood and Jeglum, publication by Great Lakes Forest Research Centre, Canadian Forestry Service, Department of the Environment, 1984.	47484



1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning. Please be  
3 seated.

4 Good morning, Ms. Seaborn.

5 MS. SEABORN: Good morning, Madam Chair,  
6 Mr. Martel. Good morning, Mr. Marek.

7 THE WITNESS: Good morning.

8 GEORGE MAREK, Resumed

9 CONTINUED CROSS-EXAMINATION BY MS. SEABORN:

10 Q. Mr. Marek, when we left off on Monday  
11 we were discussing Forests for Tomorrow's silvicultural  
12 prescriptions and ground rules generally and I just  
13 have a few more questions on that topic.

14 Could you have a look for me at Exhibit  
15 1211 and those are the silvicultural ground rules for  
16 the Iroquois Falls Forest Management Unit.

17 A. Exhibit 1211?

18 Q. Yes.

19 A. Yeah.

20 MS. SEABORN: Does the Board have that,  
21 Madam Chair?

22 MADAM CHAIR: Yes, we do.

23 MS. SEABORN: Thank you.

24 Q. Now, if you look at the second to  
25 last page of that exhibit, Mr. Marek.

1 A. Second last.

2 Q. Yes. It says 94 on the top  
3 right-hand corner.

4 A. Correct.

5 Q. You'll see under site description it  
6 says thin soils, under 10 centimetres, over bedrock.

7 A. Right.

8 Q. FEC Group 1, FRI site class 4 or PFR?

9 A. Right, right, yeah.

10 Q. And am I correct that this particular  
11 silvicultural ground rule applies to all working  
12 groups?

13 A. Right.

14 Q. And under silvicultural system we  
15 have full marketable harvest, and the evidence was that  
16 full marketable harvest referred to clearcut in terms  
17 of silvicultural system.

18 A. Right.

19 Q. And under method of harvest there's a  
20 reference to full-tree, tree-length mechanized or  
21 conventional above that.

22 A. Right.

23 Q. Okay. And then along the column it  
24 says, as above for the method of harvest.

25 A. That's correct, yeah.

1 Q. And then under the renewal treatment  
2 description the option that is listed is, leave for  
3 natural regeneration, no retreatment.

4 Now, based on the information that is  
5 contained in this particular ground rule, would you  
6 have a concern about the use of the full-tree harvest  
7 method on these types of sites?

8 A. Yes, I would, but not only that, this  
9 whole prescription and the Table 4.11 here, ground  
10 rules for normal operation, this bothers me because  
11 that is a very broad formulated statement and I think  
12 actually many cases is not clear enough what the  
13 answers really are.

14 Q. Now, Mr. Marek, if we could go back  
15 to Exhibit 1416A which are the silvicultural  
16 prescriptions.

17 A. The same...

18 Q. No. I have an extra copy if that  
19 is... (handed)

20 A. Oh, you are talking about -- yes.

21 Q. Yes. FFT's silvicultural  
22 prescriptions.

23 A. Yes, yes, yes. I have it here.

24 Q. Now, on the second page under  
25 silvicultural standards, Item 2.1(a) black spruce

1 working group.

2 A. Yes.

3 Q. We've looked at this one before, and  
4 you'll see there's a reference in that particular  
5 standard to:

6 "For mature black spruce stands with  
7 distinct forest vegetation and soil  
8 conditions as described in FEC Clay Belt,  
9 FEC northwestern Ontario..."

10 A. Right.

11 Q. "...northwestern Ontario Forest  
12 Ecosystem Interpretations."

13 A. Right.

14 Q. Now, I gather from your evidence  
15 that, in your opinion, the FECs need to be improved  
16 before they can be relied upon as a tool to assist the  
17 forester in preparing ground rules?

18 A. Yes.

19 Q. And could you turn to the  
20 northwestern Ontario Forest Ecosystem Interpretations  
21 which is the small blue book.

22 A. Yeah.

23 Q. Exhibit 1531.

24 A. Yes.

25 Q. And could you turn to page 1-7. It's

1 behind the red tab.

2 A. Yes, yes, yes. I have it.

3 Q. Now --

4 A. Correct.

5 Q. Now, you'll see in the box partway  
6 down the page there's a statement that:

7 A. "Under no circumstances...", yes.

8 Q. "Under no circumstances should the  
9 information in this guide be construed as  
10 a formal recommendation or guideline for  
11 timber or resource management or as a  
12 prescription for specific sites."

13 A. Yes.

14 Q. Now, would you agree with me that one  
15 of the ways that -- one of the things that could be  
16 done to refine the FECs would be to remove this  
17 qualifier so that there was more reliance being placed  
18 on these documents?

19 A. That's correct.

20 Q. Thank you. And, Mr. Marek in your  
21 evidence you talked about additional detail that you  
22 thought was necessary in order to refine the FECs.

23 A. That's correct. That has been stated  
24 fairly clearly, Madam.

25 Q. Yes, thank you. Now, in the

1 Beardmore witness statement, Mr. Marek, you expressed  
2 concern that areas classified in the FRI as production  
3 forest reserve or PFR be proposed for normal  
4 operations.

5 A. Correct.

6 Q. And in the context of that witness  
7 statement and that area, those sites amounted to  
8 approximately 50 per cent of the total area?

9 A. That's very approximate -- I think  
10 it's probably more, however, I have put down the 50 per  
11 cent at least, yes, in that particular area there.

12 MR. FREIDIN: What document are you  
13 referring to?

14 MS. SEABORN: The Beardmore witness  
15 statement, page 8.

16 MR. FREIDIN: Thank you.

17 MS. SEABORN: Q. Now, Mr. Marek, at the  
18 beginning of this hearing an exhibit was filed, Exhibit  
19 56, the Forest Resources of Ontario 1986, and in that  
20 document at page 17 there's a definition of production  
21 forest reserve and protection forests?

22 A. Correct.

23 MS. SWENARCHUK: Which page?

24 MS. SEABORN: Page 17.

25 Q. And, Mr. Marek, I believe you gave

1 evidence earlier that you were involved with Plonski--

2 A. Plonski, that's right.

3 Q. --in making this determination in  
4 terms of the --

5 A. Formulation what protection forest  
6 reserve is and what it stands for in the inventory that  
7 time.

8 Q. Okay. And you are aware obviously  
9 from your testimony that it's now called production  
10 forest reserve?

11 A. Yes, yes.

12 Q. And production forest reserve,  
13 according to the Forest Resources of Ontario, are those  
14 areas representing 6.1 per cent of productive forest  
15 lands which have significant silvicultural and forest  
16 management impediments, these may be extremely rocky  
17 soils, steep slopes or shallow soils?

18 A. That is correct.

19 Q. And would you agree with that  
20 definition; is that the same definition that you had in  
21 mind when you talk of protection forest reserve?

22 A. No, there is a difference, Madam, and  
23 may I point out, when this protection forest reserve  
24 under the old inventory was formulated it was stated  
25 very clearly that it encompasses -- the PFR encompasses

1 the area which has at least 40 per cent of visible bare  
2 rock during the -- identified on the aerial photograph,  
3 and that time may I add further to this, it was pointed  
4 out to us, and from my experience I have noted, that in  
5 many areas you cannot see bare rock because that bare  
6 rock is covered by thin layer of mosses or lichens and,  
7 therefore, that time we thought that it's a very  
8 conservative, conservative look at the protection  
9 forest reserve as far as size, distribution and so on  
10 because in many cases -- well, you cannot identify bare  
11 rock as such, you know, the areas actually are  
12 identical.

13 Q. And I think, Mr. Marek, the Board has  
14 heard quite a bit of evidence to the effect that for  
15 the purposes of the FRI it's an age over height  
16 relationship?

17 A. Correct.

18 Q. And it's aerial photointerpretation?

19 A. That's right.

20 Q. Now, there has been evidence that the  
21 PFR as identified through the FRI on maps raises a red  
22 flag for the unit forester that he should look at these  
23 sites and think what the implications of operations may  
24 be?

25 A. Very much so.

1 Q. And that sounds reasonable to you?

2 A. Yes.

3 Q. Okay. And I take it then -- or am I  
4 correct that your difficulty in terms of harvest in  
5 either protection forest or production forest reserve  
6 would be that those areas would normally form part of  
7 normal operations?

8 A. They are included in the normal  
9 operation and allocated as fully productive forest  
10 lands, part of the allowable cut and part of the total  
11 operation which extracts timber.

12 Q. Now, if we go back to FFT's  
13 silvicultural prescriptions, there's some guidance  
14 offered by FFT in relation to areas that may be  
15 vulnerable to logging permutations, and that is at No.  
16 2.3(a), and then going down there's a specific term and  
17 condition that relates to PFR and that is 2.3(c) and it  
18 says:

19 "All shallow soiled sites and sensitive  
20 sites shall be identified as protection  
21 forest reserve (PFR) on FRI maps and  
22 shall be identified on maps as part of  
23 the timber management plan."

24 A. Yes.

25 Q. Now, would you agree with me that

1       regardless of whether these site types are identified  
2       through the FRI, through photointerpretation, the  
3       important point from your perspective is that these  
4       sites be managed in such a way that if they are cut  
5       there's regeneration in an economic and predictable  
6       time frame?

7                   A.   That is correct.

8                   Q.   And just so I am clear about the  
9       import of this term and condition, are you suggesting  
10      then that certain surveys be conducted prior to harvest  
11      on sites that have been identified as PFR?

12                  A.   I think there should be more detail  
13      examination on the ground, Madam, and action taken to  
14      prevent some of the possible misconception or  
15      misinterpretation if this is not done; in other words,  
16      more detail analysis of the condition on the site  
17      itself.

18                  Q.   And would it be fair to say then that  
19      in your view what should occur is that there should be  
20      verification of the photointerpretation for these  
21      particular sites?

22                  A.   I think that most of the company do  
23      this, they are fully aware of also the consequences,  
24      but the problem I think we have is that they follow  
25      some time prescription which are part of the timber

1 management planning process and timber management plan  
2 itself and perhaps disregard some of these ground  
3 rules.

4 And may I, Madam Chair, tell you this:  
5 That from my experience examining many of these  
6 plantations, indeed in prescription it says the shallow  
7 soil, such and such a condition of the site requires,  
8 say, alternate strip cutting or some modified cuts, and  
9 so this is very vaguely outlined, modified cuts, and in  
10 practice actually they clearcut quite often these  
11 areas.

12 Q. Getting back, Mr. Marek, to the issue  
13 though of verification of the photointerpretation, we  
14 have also heard evidence, and I think you would agree,  
15 that it would be possible that something that has been  
16 classified as PFR through the FRI, if you go in and  
17 have a look at it you may find that your stand is  
18 actually in better shape than you had originally  
19 thought. That could happen?

20 A. All possible.

21 Q. Okay. And it could also happen that  
22 you could go in and have a look at a PFR area and  
23 decide that this is an area that, if cut, would be  
24 either very expensive to regenerate or would have  
25 physical limitations to the type of logging that you

1 wanted to carry out?

2 A. Both, both. The cutting prescription  
3 or the harvesting prescription surely should be adapted  
4 to the silviculture needs or renewal. So this is I  
5 think a good example where silviculture and logging  
6 should synthesize and will not work in a cross-purpose.

7 Q. And so would you agree with me then  
8 that in terms of protection forest and PFR, what we  
9 should be doing, regardless of the purpose, is to go in  
10 and verify the conditions in those particular sites,  
11 that should be a mandatory requirement for the unit  
12 forester to look at those sites before he finalizes his  
13 prescription?

14 A. That is correct.

15 Q. And would you agree that if an area  
16 such as this is examined, then what you should be doing  
17 after you do certain prescriptions, cut surveys, would  
18 be to prescribe at the same time not only your harvest  
19 method but your renewal method and your tending  
20 requirements as well at the same time?

21 A. And the consequences, Madam.

22 Q. Yes.

23 A. The consequences, that's very  
24 important. Not only look at it, but visualize as  
25 clearly as possible the consequences may be for such

1 action of logging for silviculture, whatever.

2 Q. Okay. So would it be fair to say  
3 then you would agree that the available options should  
4 be described by the forester with sufficient detail so  
5 that there will not be any negative environmental  
6 impacts as a result of the prescription?

7 A. Yes, and they should be in the forest  
8 plans and also in the preparation and also in the  
9 negotiation of, or the open houses and the means to  
10 communicate with public; in other words, there should  
11 be done in such a way that public do understand the  
12 problem and also know the exact action by the company  
13 or by the harvesting.

14 Q. Okay. And is that the rationale then  
15 behind the suggestion in paragraph 2.3(c), that these  
16 areas shall be identified on maps as part of the timber  
17 management plan?

18 A. That's what I said, Madam.

19 Q. Okay. Now, we've heard evidence from  
20 you, Mr. Marek, over the past couple of weeks that you  
21 are concerned about -- you are concerned that current  
22 prescriptions do not adequately maintain site  
23 productivity and you have spoken to this issue in  
24 particular relation to black spruce forests.

25 A. That is correct.

1 Q. And you are also concerned about  
2 long-term effectiveness or success of both artificial  
3 and natural regeneration?

4 A. Yes.

5 Q. Would you agree with me that in order  
6 to determine the effects of practices on site  
7 productivity and the effectiveness or success of  
8 regeneration methods, monitoring is required?

9 A. Yes.

10 Q. And I'm going to propose to you four  
11 things that -- I'm going to suggest to you four things  
12 that should go into a monitoring system and I want you  
13 to tell me if you agree with me. The first thing you  
14 need to know is exactly what action was taken on a  
15 particular piece of geography; that is, you need to  
16 know what the prescription was?

17 A. Detailed prescription, yes.

18 Q. And you need to determine the results  
19 of the action that's taken over a period of time, you  
20 need to determine the effects of that action?

21 A. That's correct.

22 Q. And would you agree that you would  
23 also need to compare the effects to the desired result  
24 of the action, you have to determine whether or not you  
25 were effective?

1 A. That is monitoring of results.

2 Q. And would you agree that you would  
3 also need to have a feedback loop which, if you were  
4 effective, allows you to either repeat that original  
5 action in similar circumstances or to modify the action  
6 if you were ineffective?

7 A. Correct, the corrective action to be  
8 taken, yes.

9 Q. And you would want to take corrective  
10 action in the hopes of achieving better results next  
11 time?

12 A. Correct.

13 Q. And would you agree with me that if  
14 these four elements are broken then your results could  
15 be called into question, and I look at it in the form  
16 of a loop, and if the loop is broken, then you may have  
17 problems with your results?

18 A. Yes.

19 Q. In terms of the action taken, would  
20 you agree that the action taken in the form of a  
21 silvicultural prescription is a whole package; it's  
22 your harvest methods, it's your renewal treatment, and  
23 it's your tending?

24 A. That is true.

25 Q. And would it be important to know for

1 a particular piece of geography the site  
2 characteristics of that piece of geography, what type  
3 of harvest was carried out, what type of renewal was  
4 carried out?

5 A. Yes.

6 Q. And what type of tending was carried  
7 out?

8 A. Yes.

9 MADAM CHAIR: Ms. Seaborn, isn't this a  
10 matter that is discussed in the draft terms and  
11 conditions with respect to the report on past forest  
12 operations?

13 MS. SEABORN: In the context of which  
14 terms and conditions, Madam Chair?

15 MADAM CHAIR: Of the Ministry of Natural  
16 Resources.

17 MS. SEABORN: Yes. This is also, Madam  
18 Chair, addressed in our terms and conditions. We have  
19 a somewhat different view from MNR as to the level of  
20 detail required.

21 MADAM CHAIR: And that's what you're  
22 exploring with Mr. Marek?

23 MS. SEABORN: That's right.

24 MADAM CHAIR: All right.

25 MS. SEABORN: And I would like to obtain

1 some clarification from Mr. Marek as to how he would  
2 see a monitoring program working.

3 MADAM CHAIR: All right, thank you.

4 MS. SEABORN: Thank you.

5 THE WITNESS: Madam Chair, may I add one  
6 thing to this thing, to this statement. I feel  
7 strongly that before even you do this that the goals  
8 and objectives have to be stated very clearly, and I  
9 think that while we may discuss the follow-up as  
10 suggested by counsel there, before we got clear goals  
11 or objectives for a landscape and you brought the  
12 landscape in the total area of forest, we must know  
13 first what our intents are with that land, and that  
14 going to affect drastically in some cases the follow-up  
15 prescriptions for implementation and indeed the results  
16 of it.

17 And I think perhaps, if I may add here,  
18 we must not forget primary objective and, that is,  
19 goals and objectives have to be very clearly stated  
20 first.

21 MS. SEABORN: Q. And your goals and  
22 objectives, Mr. Marek, that are set at the outset of  
23 the planning process are going to assist you in  
24 determining what action should be taken for that  
25 management?

1                   A. Oh, very much, that affect the whole  
2 game, the whole number of implementation later on.

3                   Q. And MNR in its terms and conditions  
4 has requirements for the setting of objectives?

5                   A. Well, that is where the problem  
6 start. MNR and Industry have certain goals but they  
7 may be contrary to the other objectives and that's why  
8 we have this problem right now, fighting for piece of  
9 land, how you going to manage it.

10                  Madam Chair, I think that is of most  
11 important and I hope that this going to be considered  
12 in the final decision, because unless we have very  
13 clear goals, what we going to do with this our forest,  
14 we going to use it intensively, extensively,  
15 multi-purpose forestry, intensive forestry of timber  
16 species as I suggested here during my -- I think they  
17 are following the whole thing behind.

18                  MADAM CHAIR: So your point, Mr. Marek,  
19 to the Board has really been that, as a first step, we  
20 would sit down -- someone would sit down and they would  
21 in fact carve up the area of the undertaking with  
22 respect to areas where there would be timber operations  
23 and those would be done in ways that you have  
24 discussed, intensively and so forth?

25                  THE WITNESS: Yes, that's right.

1                   MADAM CHAIR: And that would be the first  
2                   step you would see?

3                   THE WITNESS: Well, first step is what we  
4                   have to deal with.

5                   MADAM CHAIR: The inventory of what is  
6                   there in the forest and then what areas we would devote  
7                   to timber?

8                   THE WITNESS: That's right, and then you  
9                   start carving --

10                  MADAM CHAIR: And other areas that we  
11                  wouldn't.

12                  THE WITNESS: Very much so.

13                  MADAM CHAIR: All right, fine.

14                  MR. MARTEL: There would be no problem  
15                  though if you did it that way; would there, if you  
16                  divided the pie up, the conflict between the groups  
17                  wouldn't arise?

18                  MADAM CHAIR: Well, is that a question,  
19                  Mr. Martel?

20                  MR. MARTEL: Yes, it's a question. I  
21                  mean --

22                  MADAM CHAIR: We can get Mr. Marek's  
23                  opinion on that.

24                  MR. MARTEL: Well, I'm going to get Mr.  
25                  Marek's opinion. But if you've cut the pie up --

1 THE WITNESS: I appreciate your help, Mr.  
2 Martel.

3 MR. FREIDIN: What was the proposition,  
4 Mr. Martel, I didn't quite hear it?

5 MR. MARTEL: If you cut the pie up, you  
6 set your objectives, you then slice the pie up who gets  
7 what bit of land for what purpose, and you've got  
8 intensive areas because I think Mr. Marek said several  
9 weeks ago that certain areas you would --

10 THE WITNESS: Should be allocated for  
11 timber production.

12 MR. MARTEL: Some for timber production,  
13 other parts of the land or landscape for other uses,  
14 then if that were divided that way, there would be no  
15 conflicts.

16 THE WITNESS: Well, I'm not as positive  
17 or optimistic as you are, Mr. Martel, because I think  
18 in forestry through the history, I speak as a forester  
19 who dealt with these issues many times before, there  
20 always will be problems because you cannot satisfy  
21 everybody, as you know.

22 MR. MARTEL: No, but it would be easier  
23 if it could be done so neatly--

24 THE WITNESS: Oh yes.

25 MR. MARTEL: --to carve it up that way

1 and everybody agreed to whose territory was what.

2 THE WITNESS: Mr. Martel, we would know,  
3 we would know what we are dealing with, No. 1; in other  
4 words, we would be clear, we would have a better  
5 concept of what we are dealing with and I think that is  
6 very important, then let's discuss some of these  
7 tradeoffs and let's discuss some of these options we  
8 may improve or so.

9 But what bothers me presently that we  
10 have guidelines, you know, which telling us: You do  
11 this and do you that, and nobody agree with it, or you  
12 have so much opposition to it that I'm representing in  
13 Beardmore Society, and they are saying we want to have  
14 this, you want to have that, somebody else want that,  
15 without even knowing what we got.

16 MR. FREIDIN: If it's a lemon meringue  
17 pie, Madam Chair, I want it all.

18 MS. SWENARCHUK: Everybody wants it all,  
19 that's the problem.

20 THE WITNESS: But we have to resolve that  
21 problem, it's obvious, we have to tackle this problem,  
22 that we cannot override forever. See, one of the --  
23 counsel, may I say a few more words on this subject  
24 because I think we have to start someplace, we have to  
25 start someplace, and I think that these guidelines will

1 not resolve the problem, because Mr. Baskerville or  
2 Gordon testified very clearly that we have a problem in  
3 this area, what to do with that pie.

4 So let's go through the first step as  
5 suggested perhaps and then see what we got, where we  
6 going to do what and so on and then go in the  
7 prescription and follow up proper forestry practices.

8 MADAM CHAIR: Thank you, Mr. Marek.

9 MR. MARTEL: But that's why we need a  
10 clear statement of what and why I asked you on Monday  
11 whether the amount of lumber wood that we want to take,  
12 the sustainable yield, the quota by 2010 and so on, if  
13 that is in fact a moving target, because until you have  
14 a determination of what you expect to get from that  
15 landscape, you have difficulty with everything else.

16 THE WITNESS: Because we don't know what  
17 we got.

18 MR. MARTEL: We don't know what we got,  
19 we don't know what we want.

20 THE WITNESS: Exactly. We have -- Mr.  
21 Martel, we have figures.

22 MR. MARTEL: Oh yes.

23 THE WITNESS: Okay.

24 MADAM CHAIR: Ms. Seaborn?

25 MS. SEABORN: Thank you, Madam Chair.

1           Q. Mr. Marek, in the context again of  
2           silvicultural prescriptions, I take it then you would  
3           agree that prescriptions contained in a timber  
4           management plan must have a sufficient level of detail  
5           to not only direct the forester and inform the public  
6           but also to ensure that the monitoring program provides  
7           useful information?

8           A. Yes, yes, yes.

9           Q. And would you also agree that  
10          checking the quality of the action taken is an  
11          important aspect of the comprehensive monitoring  
12          program, checking the quality of what it is you have  
13          done?

14          A. Yes, mm-hmm.

15          Q. Yes?

16          A. Yes, yes.

17          Q. Thank you. And would you agree that  
18          if a monitoring program does not include the checking  
19          of quality, the results of the program may be flawed,  
20          you may lose a link in the chain if you don't check the  
21          quality of your work?

22          A. Yes.

23          Q. And is it fair to say, Mr. Marek,  
24          that you advocate to the Board that silviculture  
25          effectiveness should be monitored beyond the free to

1 grow stage?

2 A. Very much so. Very important aspect  
3 which seems to be right now in the big limbo, what we  
4 do or what one do after you declare stands to be free  
5 to grow, and you come back there two, 10, 15 years  
6 later and they are not free to grow.

7 Q. And so is it fair to say that your  
8 opinion is that free to grow is only a short-term  
9 measure of success?

10 A. Very much so, yes.

11 Q. Now, in testimony from Dr.  
12 Hutchinson, the Board has heard that his recommendation  
13 is that another survey should be performed for conifers  
14 at least after canopy closure. Would you agree with  
15 that suggestion?

16 A. What you mean exactly by canopy  
17 closure; in other words you are talking the canopy  
18 closure of the primary species, in other words, conifer  
19 species or poplar, whatever it may be.

20 Q. Dr. Hutchinson was talking in the  
21 context of conifers only.

22 A. Yeah.

23 Q. And his range was 15 to 25 years.

24 A. Yes. That crown -- when you talk  
25 about crown closure, and I like to refer later on to

1       this here, the crown closure by one specie is not  
2       necessarily the final, the final result of the stand  
3       dynamics, this may have change, and I have pointed out  
4       to you in my slide that perhaps sometimes when you have  
5       a crown closure established by balsam fir, in few years  
6       after you may have a different crown closure  
7       established by different species in case of poplar.

8               So you see, here again we have to be very  
9       careful how we define our objectives, how we define  
10      what we want to have and monitor steady the dynamics of  
11      the stand what nature are forcing to do perhaps to  
12      accept or to deal with, and that is a very importance  
13      aspect.

14             I agree that crown closure is very  
15      important part of the stand dynamics when you talk  
16      about one specie production or multi-production of  
17      primary species, but when it comes down to the final  
18      results, in many instance, the manager is steadily  
19      under the gun by nature which thinks different and  
20      sometimes surprises us frequently.

21             Q.   Would in your view, Mr. Marek, a  
22      crown closure survey of, for example, a primary conifer  
23      species improve the monitoring process if we undertook  
24      that sort of survey?

25             A.   Oh yeah, we have to survey frequently

1 and just see results of our intervention and also  
2 results of natural intervention which works  
3 hand-in-hand.

4 Q. But how long after free to grow one  
5 undertakes that survey then is specie-specific, you're  
6 saying?

7 A. Depends on specie, depends on sites,  
8 depends on many interferences by nature, by the whole  
9 dynamic of the forest, and for me right now state  
10 categorically that certain time is appropriate to make  
11 final decision on things is difficult because, from my  
12 experience - and European experience as you know goes  
13 hundreds of years back - this process as Baskerville  
14 said, I never has, it's time and it's space and it  
15 varies.

16 So it requires as frequently as possible  
17 to look at these condition, take action or not to take  
18 the action and then go back and monitor again.

19 MADAM CHAIR: But for planning, Mr.  
20 Marek, at some point you have to say we think we have a  
21 forest or we don't have one. I mean, if a black spruce  
22 stand is 40 years old, would you say yes we are going  
23 to have a commercial forest, I think chances are good?

24 THE WITNESS: Madam Chair, the forester  
25 is -- this is the difference between agriculture and

1 forestry, that forester never knows what may jump on  
2 him around the corner, you know today this, tomorrow  
3 that, and it's obvious when you say, say you have an 80  
4 years rotation in spruce and you have 40 years young  
5 stands, site class 2 developing very nicely, and all of  
6 a sudden, bang there goes blowdown there goes  
7 interference by nature, you know...

8 MADAM CHAIR: I understand what you're  
9 saying, but for planning, you can't plan on the basis  
10 that nothing might ever survive to an age where it  
11 would be harvested?

12 THE WITNESS: That's correct, you have to  
13 look at these things. So that is why it's so important  
14 this monitoring that you are frequently as possible  
15 looking at the condition and take actions.

16 Now, if you don't do it, obviously you  
17 are taking much bigger risk if you don't, okay.

18 MS. SEABORN: Q. And I take it then that  
19 you agree that a survey should be undertaken then  
20 certainly beyond free to grow and that survey would  
21 assist you in determining whether or not you were  
22 effective with your original prescription?

23 A. Yes. I think, Madam, if I may add  
24 here, perhaps presently and in the past we did not  
25 monitor frequently enough; hence we have the results

1 and some of the results are extremely surprising to  
2 many young foresters, inexperienced foresters who get  
3 involved in this role.

4 I go back to Mr. Martel's suggestion to  
5 keep foresters in the field or obviously pointed out  
6 that we should do it, this monitoring should be done by  
7 experienced foresters, it should be done frequently as  
8 possible, and the question, of course: What is the  
9 role of forester in general, should we be in the field  
10 or should be in the offices? And for timber management  
11 planning purpose I think that No. 1 problem we have,  
12 that we are tying these foresters who should be in the  
13 field to the bookwork in the office.

14 Q. And would it be fair to say, Mr.  
15 Marek, that another reason for conducting surveys on  
16 certain sites beyond free to grow would be if you had a  
17 concern about site productivity in terms of nutrient  
18 depletions, those depletions may not become apparent  
19 until quite late?

20 A. Yes, yes, very much so. Very much  
21 so.

22 Our study in Nipigon area prove that and  
23 you had a chance to see that study which was done 10  
24 years ago that we were suspicious about certain signs  
25 in the forest and I, with my experience, I noticed,

1 look, there is something wrong, we are not getting what  
2 we should.

3 So we conducted the survey which was very  
4 extensive one and very detailed one and we obviously  
5 have found to our embarrassment that indeed the  
6 progression of stand dynamic is not as we thought would  
7 be, linear progression, it was full of bumps here and  
8 there and we said, we have to look at it this problems  
9 and what we going to do with it, sometimes it's too  
10 late to do anything about them.

11 Q. Mr. Marek, are you generally familiar  
12 with the SOARS reports?

13 A. Yes.

14 Q. And are you aware that the reporting  
15 method in SOARS was such that results were not classed  
16 as to whether the successful regeneration was to the  
17 species planted or seeded?

18 A. Second growth stands.

19 Q. Yes?

20 A. In second growth stands, yes.

21 Q. Okay. And, for example, if an area  
22 was planted in jack pine but the result was successful  
23 regeneration to black spruce based on volunteers, SOARS  
24 - would report that as a silvicultural success?

25 A. How do you report success, how do you

1 report failure; the glass is half full, but the same  
2 time glass can be half empty.

3 And it seems to me the SOARS is a typical  
4 example where the glass was half empty, as far as I'm  
5 concerned and, of course, by Ministry was reported was  
6 half full. And that's a perhaps general statement  
7 which identify surveys done, and I quoted in my  
8 statement there of Mr. Kerrio, Mr. Pope - you probably  
9 remember my quotes there - well, both of these  
10 gentlemen who are Ministry of Natural Resources that  
11 time, said: Well, it can be half full and half empty,  
12 but there are trees there. And that is not a good  
13 forestry, Madam.

14 Q. No, I'm looking at this example.  
15 Taking this hypothetical, Mr. Marek, in the context of  
16 monitoring, would you agree with me in that example you  
17 may have a very viable black spruce stand but in terms  
18 of monitoring your success, you weren't effective, the  
19 action taken was to plant jack pine and you wanted --  
20 and presumably your original goal was to have a jack  
21 pine stand, but that is not what you ended up with?

22 A. In other words, you end up with big  
23 compromise, right? Will you call it compromise? Your  
24 objective was such and such, you wind up with such and  
25 such condition.

1           Q. What I'm suggesting, Mr. Marek, is  
2   that in that scenario you have a particular objective  
3   and then you set your prescription and your  
4   prescription is to plant jack pine, you end up with a  
5   black spruce stand and, while that may be a very good  
6   forest stand, very good second growth forest, it tells  
7   you nothing about whether or not that was an effective  
8   prescription in the first instance?

9           A. Of course the prescription -- if the  
10   prescription, Madam, was A and you find out that you  
11   accomplished B, there is a difference between A and B  
12   obviously.

13          Q. Right. And there has been a cost  
14   associated with that original prescription because  
15   you've gone out and planted?

16          A. That's correct.

17          Q. And would you agree with me that in  
18   order to accurately track silvicultural effectiveness  
19   we need to somehow put a mechanism in place where you  
20   can trace the results of your prescriptions back to the  
21   initial action taken?

22          A. That has been stated on several  
23   occasions, Madam, we have been through that before and  
24   I -- my categorial answer is yes, you have to.

25          Q. And following from that, would you

1 also agree that the monitoring of silvicultural  
2 prescriptions should also be tied back to the site type  
3 or piece of geography where the activity was  
4 undertaken?

5 A. Yes, and reason is not -- reason is  
6 that we can learn a lot from this kind of monitoring  
7 because this way perhaps we can prevent inventing wheel  
8 and the kind of haphazard strategy. I think it's a  
9 very important thing to learn from the mistakes or  
10 successses for that matter, and I think that's very  
11 important.

12 Q. Now, Mr. Marek, returning to Exhibit  
13 1416A again, the silvicultural prescriptions, partway  
14 down the first page it says:

15 "Without limiting the generality of the  
16 foregoing, silvicultural prescriptions  
17 shall...", and under (g),  
18 "prohibit harvesting on sites that cannot  
19 be naturally or artificially regenerated  
20 to the primary species", and over the  
21 page to (i),

22 "not permit productive forest land to be  
23 harvested and left untreated."

24 And on page 4 again there's a number of  
25 suggestions in relation to shallow soiled sites.

1 A. Correct.

2 Q. Sensitive sites.

3 A. Yes.

4 Q. Now, is it a fair summary of your  
5 evidence that timber should not be harvested unless the  
6 regeneration is going to be to a primary species or an  
7 equal or superior species?

8 A. I understand what you are saying,  
9 Madam, and let's clarify it more specifically. If you  
10 harvest black spruce stands, surely we should have  
11 black spruce stands back unless, until some other more  
12 important factors occur where we cannot achieve it, and  
13 that may be the case in some instances I know and I  
14 remember.

15 But in general, when we harvest certain  
16 working group, if we take jack pine or spruce or  
17 poplar, we should maintain that working group in place  
18 and renew that area and the species accordingly.

19 We cannot abandon our forest lands  
20 regardless how much we have of it in Canada, abandoning  
21 in whim of nature where nature eventually always  
22 establish forest again, there is no doubt about it, I  
23 sometimes wonder what kind of concept we are dealing  
24 with when we say the nature will -- eventually the  
25 nature will eventually come with the answer or heal

1       itself and statement of similar nature.

2                   I think we as professional people, we as  
3       conscious citizens, we should help nature where we can  
4       to come back in species and productivity of sites  
5       similar to what we had before.

6                   MADAM CHAIR: Well, with the exception of  
7       poplar; if you cut a poplar stand, you would  
8       consider -- and it was conducive to black spruce or  
9       another species, you would consider doing that, under  
10      your plan of an intensively managed area you would do  
11      that?

12                   THE WITNESS: Madam, I have made a  
13      certain statement on this in the prescription when I am  
14      saying that if you have or we have, as the landlords,  
15      good stand of poplar, I personally feel that poplar  
16      should be perpetuated. We may need poplar just as  
17      badly as we need spruce today in future, and it's --  
18      nature gave us good stand of poplar, surely that's a  
19      good indicator that we should have a good stand again.  
20      I was quite specific in the prescriptions on it, Madam.

21                   Now, if you have a poplar which reach  
22      pathological rotation or is not performing well, and  
23      nature is not perfect, we have many areas perhaps where  
24      poplar didn't belong but it got established and perhaps  
25      would be suited to other species, fine, but let's

1 analyse first before we do a plant.

2 MS. SEABORN: Q. Mr. Marek, I'm going to  
3 come to poplar in particular in a moment in the context  
4 I think, Madam Chair, of your question.

5 We've heard evidence, Mr. Marek, from MNR  
6 that except for forested land that is removed from  
7 timber production by the presence of permanent roads  
8 and landings virtually all areas that are harvested,  
9 burned by wild fire, blown down, or killed by insects  
10 regenerate over time to commercial tree species, that's  
11 the proposition that has been put forward to the Board.

12 A. I know that proposition, Madam, and I  
13 think it's a faulty one, it's a faulty one to a degree.  
14 Yes, we always going to have a forest regardless what's  
15 happened, regardless what we do to it, but the time  
16 element is what bothers me in that statement; in other  
17 words, there is no specific time element involved and I  
18 think that is faulty definition.

19 Q. And then is it fair to say then in  
20 the context of FFT's silvicultural prescriptions you  
21 would distinguish between the forest coming back to a  
22 commercial tree species as opposed to a primary species  
23 or an equal species?

24 A. Madam, this will depend very much on  
25 your goals and objectives. If your goals are in

1 certain areas maximize timber production, then we are  
2 in one kind of category of forestry; if we going to say  
3 that rest of the areas will be multi-purpose forestry  
4 practice where many users will share the pie, then of  
5 course we have another proposition and regardless  
6 always keep in mind that the goals and objectives are  
7 very important. Is that...

8 Q. What I want to understand, Mr. Marek,  
9 a little bit is your concept to a primary species.  
10 Would you also say that a primary species is a species  
11 that is in demand by the forest industry?

12 A. Primary species requires element of  
13 time. If presently primary species are required by the  
14 Industry as in form of jack pine, spruce, whatever,  
15 then those are primary species; if in the future  
16 primary specie or the demand for certain products or  
17 timber will be required, then we may call that primary  
18 specie.

19 In other words, it's the prime -- the  
20 degree is a demand by Industry to produce products and  
21 that means that presently and in the past the demand by  
22 our Industry sawlog and in the pulp and paper industry  
23 was primary for conifer species.

24 Q. And I take it from what you've said  
25 then, Mr. Marek, that in your view what we should be

1 ensuring is that the prescriptions the forester  
2 implements will result in renewal of the forest in an  
3 economic and predictable time frame?

4 A. We have to be economically minded  
5 because obviously that sells the product, that sells  
6 the...

7 Q. And it's not good enough, in your  
8 view, just to say that the forest will renew itself  
9 over time to something?

10 A. No, no. No, Madam.

11 Q. Now, Mr. Marek, I've had the  
12 opportunity to have a look at Mr. Benson's witness  
13 statement which is Panel 5, Madam Chair, and I just  
14 want to read in one sentence from that witness  
15 statement because Mr. Marek is here and ask him whether  
16 he agrees.

17 Mr. Benson at page 43 of Panel 5 states  
18 that:

19 "Sites that cannot be regenerated  
20 successfully should be excluded from the  
21 land base used for determining the  
22 allowable cut."

23 Would you agree with that?

24 A. In general term, yes, I would agree  
25 with that.

1                   Q. When you say in general terms, is  
2 there a qualifier you would like to put on that?

3                   A. In forestry, Madam, qualifier is a  
4 rule. But I agree with Mr. Benson, with the statement  
5 that indeed, and may I repeat perhaps, in the areas  
6 where we cannot successfully renew the forest, keep  
7 forest productive, I think we should; and if we don't  
8 know, we should stay away.

9                   Q. And so...

10                  A. And don't force ourselves on that  
11 forest, because perhaps I can say we have forest in the  
12 past, Madam, agriculture in many places where it didn't  
13 have to go or shouldn't have to go, and now we are  
14 excluding that land back into the normal lands which  
15 was before this interference.

16                  And I think we are doing the same thing  
17 in forestry, we are duplicating a mistake which  
18 agriculture have done for centuries, we are forcing  
19 ourselves as a man into the area, into the - let's be  
20 clear - ecosystem which we have no business to be, make  
21 it productive for our purposes.

22                  Q. And, Mr. Marek, just following on  
23 from your statements, you spoke in your  
24 evidence-in-chief of securing the public's trust.

25                  A. That's right.

1 Q. Would you agree that the public wants  
2 to be assured as well that regeneration will occur  
3 within an economic and predictable time frame?

4 A. Let's qualify this statement, Madam.  
5 Some public do, some don't but, in general, I think  
6 it's the duty of the conscious public to be concerned,  
7 yes, I agree.

8 Q. And would you also agree with me that  
9 the public has become more sophisticated over time in  
10 terms of showing an interest in these sorts of matters?

11 A. To a degree.

12 MR. FREIDIN: I'm wondering how helpful  
13 it is to have the witness' view of what the public  
14 think. I mean, he's not here as an expert on public  
15 opinion.

16 MS. SEABORN: Well, the reason why I  
17 asked that question, Mr. Freidin, is that Mr. Marek in  
18 one of his reports in source book 2 made a comment  
19 about relations with the public, and I think it's  
20 appropriate for me to ask him these questions.

21 MR. FREIDIN: Well, if it's in the  
22 context of -- well, depends on who he's referring to as  
23 the public here.

24 MADAM CHAIR: Well, certainly the Board  
25 recognizes that Mr. Marek is representing a certain

1 public with respect to the Beardmore group.

2 MR. FREIDIN: Very well. Then I have no  
3 problem in that case.

4 THE WITNESS: Madam Chair, may I add one  
5 word to it?

6 MADAM CHAIR: Mr. Marek?

7 THE WITNESS: Or three words. Yes,  
8 forester got to be consciously aware of public opinion  
9 and I think the reason we are in trouble now presently  
10 right across Canada because the forester didn't care,  
11 and I think that it's absolutely, absolutely essential  
12 that the forest manager who deal with public lands is  
13 extremely conscious and aware of public opinion and I  
14 am and I will be, perhaps to discomfort some others.

15 MS. SEABORN: Q. Mr. Marek, when you  
16 were employed with the Ministry, did you conduct open  
17 houses ever?

18 A. Yes.

19 Q. And so you had contact with the  
20 public through your employ as a forester with the  
21 Ministry?

22 A. Yes.

23 Q. Thank you. Now, Mr. Marek, during  
24 your slide presentation you showed some slides which  
25 depicted what you said were rotting logs that had been

1 left in the bush.

2 A. I didn't show rotting logs left in  
3 the bush.

4 Q. I thought you showed --

5 A. I left merchantable logs in the bush,  
6 I didn't say -- no, I don't think. Go back to the  
7 statement. I never mentioned -- but what I have shown  
8 partly decomposed logs in the area of burns and that is  
9 true because there is decomposition setting in, but  
10 please explain me what slides you are talking about.

11 Q. It was my recollection of your  
12 evidence that in the Beardmore -- in the slides  
13 presented on behalf of the Beardmore Society you showed  
14 some examples of some logs that you said had rotted and  
15 they weren't of use to anyone.

16 MS. SWENARCHUK: Are these the slides  
17 that were shown in Geraldton by the Beardmore group as  
18 opposed to George Marek?

19 THE WITNESS: In Geraldton, that's right.

20 MS. SEABORN: Yes, and then they were  
21 filed here. In any event, we can check the record. I  
22 appreciate that Mr. Marek didn't go through those  
23 slides and --

24 THE WITNESS: Yes, I am aware of these  
25 slides because I was at the Geraldton meeting when the

1 slides were presented.

2 MS. SEABORN: Q. Okay. You were, and  
3 were there some slides shown at the Geraldton meeting  
4 that depicted some logs in the bush that were rotting?

5 A. Which were left in the bush for four  
6 years and were decomposing badly and you can call it  
7 rotting logs, yes.

8 Q. Okay, thank you. And, Mr. Marek,  
9 there was evidence from the witnesses during FFT's  
10 Panel 2 and during the satellite hearings that there's  
11 a concern out there amongst some people about logs in  
12 the bush, being left in the bush?

13 A. Merchantable logs left on the  
14 operation.

15 Q. Now, in your experience, how long can  
16 logs be left in the bush before they will no longer be  
17 of any use for pulp paper, lumber or sawlog purposes?

18 A. Madam Chair, it depend entirely on  
19 the, No. 1, species and, No. 2, on the condition of the  
20 logs during the cutting, or during the harvesting,  
21 these are two components.

22 Q. So for some species they may last  
23 longer sitting there piled and for other species they  
24 may deteriorate quite quickly?

25 A. Correct. May I point one thing, that

1 any logs which is in the pile, and I'm talking about  
2 number of logs piled on top of each other, is more  
3 susceptible to the rotting because moisture and the  
4 contact of logs; in other words, you have shaded areas  
5 where moisture accumulates and, of course, that all  
6 inevitably lead to quicker decomposition due to  
7 bacterias and other agents.

8 Q. And, Mr. Marek, would you agree with  
9 me that there's obviously a cost associated with  
10 cutting and piling these sorts of logs?

11 A. Yes, very much so.

12 Q. Okay. And I think you would also  
13 agree with me that timber operators aren't in the  
14 business of cutting timber for the sake of cutting,  
15 these operators are running a business?

16 A. Yes.

17 Q. Okay. And would you agree with me  
18 then that there must be certain reasons that would  
19 contribute to what the Board has heard as referred to  
20 as abandonment of logs in the bush?

21 A. Yes, there are.

22 Q. Okay. And would you agree that one  
23 reason might be changing market demand?

24 A. Yes, that is one of them.

25 Q. And another one could be labour

1 problems for that particular area?

2 A. Yes, that is another one. There are  
3 many others.

4 Q. Okay. Another reason could be that  
5 it's not economical to go back in the bush to pick up a  
6 small volume of logs?

7 A. Yes, or that the hauling cost is too  
8 high.

9 Q. All right.

10 A. In other words, the area is far away  
11 and they exhibit high cost of transportation.

12 Q. So there may be some access problems  
13 associated with--

14 A. Right.

15 Q. --with the logs. Okay. And it could  
16 also be that the timber turned out to be of poor  
17 quality for whatever reason, it couldn't be used in the  
18 mill?

19 A. It may be poor quality, it's still  
20 merchantable, Madam. If it's still merchantable, then  
21 it's under the Crown Timber Act and it's a material  
22 which should be returned to the Crown or...

23 Q. And would you agree with me, Mr.  
24 Marek, that one of the ways to reduce this, what has  
25 been put forward as a problem to the Board of wood

1 waste, would be to improve management practices?

2 A. Well, I like to be more specific.

3 Management practices, yes, in general practices of our  
4 forestry, yes.

5 Q. Okay. So one of the problems why --  
6 one of the reasons why we may have a problem with wood  
7 waste is as a result of poor planning, that could be  
8 another reason?

9 A. Yes.

10 Q. Okay. Now, Mr. Marek, I want to deal  
11 for a moment with the Code of Practice for Timber  
12 Management Operations in Riparian Areas.

13 A. Riparian areas.

14 A. Yes.

15 MS. SEABORN: If I could just have a  
16 moment, Madam Chair.

17 MADAM CHAIR: What's the exhibit number?

18 MS. SWENARCHUK: 434.

19 MS. SEABORN: It is 434, I believe.

20 MADAM CHAIR: Thank you.

21 MR. FREIDIN: What exhibit number is that  
22 again?

23 THE WITNESS: I think I'm aware of them.

24 MS. SEABORN: Exhibit 434.

25 THE WITNESS: I'm aware of most of it, I

1 memorize it.

2 MS. SEABORN: Q. Okay, Mr. Marek,  
3 there's only one sentence in particular I want to read  
4 to you.

5 A. That's why I don't want to look at  
6 it, I think I know that sentence.

7 Q. I don't think you need it. Now, as I  
8 recall your testimony, Mr. Marek, your concern is that  
9 the good practices outlined in the code are not being  
10 followed in the development and implementation of  
11 silvicultural prescriptions; is that a fair summary?

12 A. That's right.

13 Q. And --

14 A. Not all, but many.

15 Q. Okay. And your concern is then not  
16 so much with the existence of the code but with whether  
17 or not it is being considered by the forester? You  
18 don't oppose the concept of a Code of Practice; do you?

19 A. Code of Practice, no, not -- you talk  
20 about basic code with guide --

21 Q. Yes.

22 A. Yes, that's right. No, I don't,  
23 there's got to be one.

24 Q. Okay. There's nothing wrong with the  
25 concept, your concern I take it is more whether or not

1 it's used?

2 A. And how prescribed.

3 Q. Okay. Now, would you support a term  
4 and condition by this Board that ensures that the  
5 practices in the code are both mandatory and  
6 enforceable?

7 A. Yes.

8 Q. And when we spoke earlier about the  
9 detail associated with silvicultural ground rules,  
10 would you agree that one mechanism to help to ensure  
11 the code is being followed is to have the good  
12 practices in the code reflected in the ground rules?

13 A. Yes.

14 Q. And they should be reflected in such  
15 a way that ensures that the practices are being carried  
16 out in normal operating areas?

17 A. In normal operating areas, yes.

18 Q. And would you agree that this  
19 approach would be consistent with the objectives of the  
20 practices which are said to be to avoid areas of high  
21 erosion, risk, and to avoid excessive exposure of  
22 mineral soil and excessive soil compaction?

23 A. Yes.

24 MS. SEABORN: And that, Madam Chair, is  
25 found on the first page of the Code, that statement.

1 Q. Mr. Marek, there has been evidence --  
2 there was evidence way back in Panel 1 of MNR's case in  
3 relation to a document called a Policy for the  
4 Integration of Other Resource Values in Timber  
5 Management.

6 A. Yes.

7 MS. SEABORN: And, Madam Chair, this  
8 policy appears in the Panel 1 -- MNR's Panel 1 witness  
9 statement commencing at page 242.

10 Q. And we've also heard evidence that  
11 this particular policy has now been replaced by the  
12 area of concern planning process.

13 And under intent, one of the intents of  
14 MNR in the implementation of this particular policy is:

15 "To increase the amount of timber  
16 available by providing opportunities for  
17 timber management operations in areas  
18 previously identified as reserves."

19 And, No. 2:

20 "to protect other resource values and to  
21 contribute to their management."

22 And in short, we have heard evidence, Mr.  
23 Marek, that this policy, as I said, has been replaced  
24 by the AOC planning process.

25 A. Correct.

1 Q. Now, you would agree with me that the  
2 primary objective of the timber management planning  
3 process is to manage the timber resource, the current  
4 timber management planning process?

5 A. Would you repeat that again?

6 Q. Yes. Would you accept that the  
7 current -- the primary objective of the current timber  
8 management planning process is to manage the timber  
9 resource; that process isn't there to manage wildlife  
10 per se or to manage fisheries per se?

11 A. May I brought up to your attention  
12 one thing, I don't think that is proper definition of  
13 what MNR is using right now.

14 Q. So you don't accept that definition?

15 A. I think the MNR is stating frequently  
16 we are practising forestry or forest practices dealing  
17 with all users.

18 Q. No, I don't question that.

19 A. Oh.

20 Q. What I'm suggesting is that in terms  
21 of the purpose of the environmental assessment, the  
22 purpose--

23 A. I see. Oh, I see.

24 Q. The purpose of the environmental  
25 assessment is a timber-related purpose?

1 A. Timber-related purpose, yes.

2 Q. The purpose of the EA isn't to manage  
3 wildlife?

4 A. That's correct.

5 Q. Okay. And in guidelines for the  
6 protection of non-timber values are--

7 A. Are taken care of, the multiplicity  
8 of...

9 Q. Yes.

10 A. That's right.

11 Q. And there are certain guidelines for  
12 non-timber values?

13 A. As well.

14 Q. And these guidelines have been  
15 formulated--

16 A. That's right.

17 Q. --to be applied in the timber  
18 management planning process?

19 A. That's correct, yeah.

20 Q. Now, we have heard evidence from the  
21 Beardmore group through you about their concern in  
22 relation to the 120-metre reserve along the canoe  
23 route, and I understand from the evidence filed that  
24 that particular issue has been settled for the moment  
25 with the Ministry?

1                   A. With the Ministry who decided stay  
2 away from the issue and maintain the status quo, which  
3 is the reserves are standing.

4                   Q. And the 120-metre reserve along canoe  
5 routes was something that was identified in the  
6 district land use guidelines?

7                   A. Yes.

8                   Q. And it was the district land use  
9 guidelines that the Beardmore group relied on to  
10 support their position?

11                  A. Yes, yes.

12                  Q. That they wanted that reserve in  
13 place?

14                  A. Yes.

15                  Q. And would you agree that a static  
16 reserve such as a 120-metre reserve, Mr. Marek, can  
17 provide a level of security that may be preferrable in  
18 some instances to what I would call a variable width  
19 reserve?

20                  A. What was that again, variable...?

21                  Q. A variable width reserve.

22                  A. Variable?

23                  Q. Yes, variable.

24                  A. Yeah.

25                  Q. That may be a reserve that would

1 change under certain conditions.

2 A. Yes, yes.

3 Q. And would you agree with me that in  
4 certain circumstances, and let's take for example the  
5 Beardmore group's concern with canoe routes, a static  
6 reserve implemented through a hard and fast rule may  
7 provide them with a higher level of comfort then as  
8 otherwise the case through a more flexible guideline  
9 approach?

10 A. Yes, but may I qualify this opinion  
11 of these members?

12 Q. Of course.

13 A. The reason, and it was already  
14 discussed matter of fact here, I think the main reason  
15 the Watchdog Society is comfortable with a rigid  
16 reserve--

17 Q. Yes.

18 A. --than with modified reserve is based  
19 on the fact that they do feel that any interference  
20 with the reserve will mean normal operations and they  
21 feel the normal operations is the operation where all  
22 kind of damages could be done to the area of whatever  
23 reserve they talking about.

24 In other words, they are scared not  
25 actually the principle of reserve, or have a half

1       reserve or this size reserve or things of that nature,  
2       they are concerned-that in the moment you open up the  
3       reserve, the normal operation takes over which they  
4       think, it's their subjective thinking to take over, and  
5       damages will occur.

6                   Q.   So they have concerns then about the  
7       use of flexible guidelines in this particular instance?

8                   A.   Flexible and more qualitative,  
9       guidelines, qualitatively oriented guidelines.

10                  Q.   And based then on their position in  
11       relation to this reserve, would you agree that a  
12       static, what I call a static reserve in certain  
13       circumstances--

14                  A.   An improvement.

15                  Q.   --can provide a higher level of  
16       protection to an interest group than a variable width  
17       reserve?

18                  A.   Under the present conditions, yes.

19                  Q.   Okay.

20                  MS. SEABORN:   Excuse me for one moment,  
21       Madam Chair.

22                  MADAM CHAIR:   Excuse me, Mr. Marek.

23                  THE WITNESS:   Yes.

24                  MADAM CHAIR:   I have one question for you  
25       about this matter and, that is, it's not my

1 understanding that you would have normal operations in  
2 a reserve if it were--

3 THE WITNESS: Equipment, technique.

4 MADAM CHAIR: You would have modified  
5 operations or you would have an area of concern process  
6 that would allow you to operate in a reserve and, in  
7 fact, under the proposed timber management planning  
8 process a reserve would not be eligible for normal  
9 operations.

10 MS. SWENARCHUK: Madam Chair, might I  
11 recall for you some of the area of concern  
12 prescriptions from the Red Lake plan which included  
13 clearcutting parts of those reserves.

14 MADAM CHAIR: Yes. Well, the Red Lake  
15 plan was not entirely under the proposed timber  
16 management planning process, and I know there are  
17 various --

18 MS. SWENARCHUK: The amendments came  
19 right up to after the hearing started, if you'll  
20 recall.

21 MADAM CHAIR: Mm-hmm.

22 MS. SWENARCHUK: The amendments to those  
23 areas of concern.

24 MR. FREIDIN: I don't think that's right.

25 MS. SWENARCHUK: Well --

1 THE WITNESS: Madam Chair, may I express  
2 my opinion--

3 MADAM CHAIR: Yes.

4 THE WITNESS: --with quoting and relaying  
5 message from Beardmore and Watchdog Society?

6 MADAM CHAIR: Yes.

7 THE WITNESS: On many meetings which the  
8 Society had with proponents of harvesting in a  
9 restricted area, in an area of reserve and so on, the  
10 statement always went, what kind of equipment you going  
11 to use in that area of concern.

12 MADAM CHAIR: Mm-hmm.

13 THE WITNESS: And the unit forester  
14 always said: Well, I don't know. On occasion he says:  
15 Well, you know very well what kind of equipment we are  
16 using or they will be using, talking about the  
17 contractors, or the FMA holders and so on, and  
18 immediately the Society say this: In other words, it's  
19 going to be the same mess as you see or can observe on  
20 a normal operations, and I quoting them.

21 MADAM CHAIR: No, I understand what their  
22 position would be.

23 THE WITNESS: So immediately discussion  
24 came up about technologies, availability of equipment  
25 which can do good job like they do in Sweden and

1 Finland and some other areas in Europe and perhaps some  
2 other area of the world, and immediately the subject of  
3 economics starts.

4 And when the economics steps in,  
5 immediately unit forester says: I have no control. So  
6 why do we hide in planning process, you know, in  
7 writing these rules when we -- are we capable in this  
8 country to supply technology or equipment or practices  
9 which will be more pleasant or human like or something  
10 which will not destroy the sites of operations?

11 MADAM CHAIR: And we have your evidence  
12 on that.

13 THE WITNESS: I dealt with that.

14 MADAM CHAIR: That is not available  
15 today?

16 THE WITNESS: That's right, it's not  
17 available today. So why do we discuss these things.  
18 Is Industry or is the operator really anxious to do a  
19 good job from the beginning, no, because he hasn't got  
20 equipment available.

21 So why are we talking about area of  
22 concern, why we are talking about area with statements  
23 like we going to take all precautions and so on? It  
24 just does not exist.

25 In practice, when you conduct normal

1 operations you will see many practices, and you have  
2 seen plenty of it in my horror pictures here or horror  
3 movie where you see quite effective impact on these  
4 sites, on these locations, and people in Beardmore, not  
5 only in Beardmore but overall I think worry about. You  
6 had a statement to that thing, where practices are not  
7 acceptable to the people nowadays, and the forester can  
8 say: What can I do, it's a matter of economics and get  
9 the timber out, and that's it. So...

10 MADAM CHAIR: Is another aspect with  
11 respect to the Beardmore experience--

12 THE WITNESS: Yes?

13 MADAM CHAIR: Is another aspect of their  
14 support for a rigid reserve, a no-cut reserve, is  
15 another aspect of that that more vigilance is required  
16 on the part of the public if in fact there can be  
17 operations in a reserve?

18 In other words, over time the public  
19 constantly has to be involved as to what goes on in the  
20 reserve, and it's simpler from the public's point of  
21 view to know that there will simply be no cutting?

22 THE WITNESS: There are elements of truth  
23 in this. There are people who rigidly feel, rigidly  
24 think that there shouldn't be cutting in certain areas,  
25 and we know the controversy now all across Canada,

1 leave certain things standing, don't touch it, that's a  
2 part of Lake Nipigon in this instance, don't touch it,  
3 but there is other motivation to it too and which I can  
4 understand; and, that is, that after they experience  
5 this lack of credibility on the part of these "normal  
6 operations", you know, the experience of: Well, lots  
7 of damage is being done, they have a concern about  
8 moose, or they have a concern about caribou in this  
9 case up north, specifically on the northern part of  
10 Lake Nipigon and they feel strongly.

11 Many of these people are trappers, Madam.  
12 Mr. Martel, you know in the countryside there are  
13 Indian people who are worrying about their wigwams  
14 there and in the area which you will go and spray there  
15 and travel there back and forth, and I had several  
16 because I am consulting Indian band, they are horrified  
17 when they see the area being damaged by logging.

18 It's not only -- it's logging removing  
19 timber, it's the mess that sometimes occur after these  
20 logging operation. They put logs across or they leave  
21 debris on the trail, they feel that native rights are  
22 endangered by -- they use it for centuries so they like  
23 to have it the same way, let's put it that way, and  
24 that's our land, and look at what they did, I cannot  
25 even carry my baby there because I cross the portage or

1       whatever.

2                       So there are all kinds of little things  
3       which contributes to this kind of rigidity which you  
4       rightly pointed out perhaps could be managed different  
5       ways, and one of them is perhaps we should have better  
6       equipment, we should have more kind of humanized  
7       approach to forest management in general. It's coming  
8       again, again in front of me and I think put us in the  
9       position where, in some cases, we cannot defend some of  
10      these trespasses or some of the action and immediately  
11      you have a very rigid conflict.

12                   MADAM CHAIR: Thank you, Mr. Marek.

13                   Ms. Seaborn?

14                   MS. SEABORN: Yes.

15                   Q. Mr. Marek, just following up from the  
16      question from Mrs. Koven, would it be fair to say then  
17      that one of the advantages of a rigid reserve approach  
18      is that a group like the Beardmore Society has a  
19      document in front of them called a district land use  
20      guideline that doesn't just deal with timber, it deals  
21      with a number of other values in terms of management;  
22      correct?

23                   A. Correct.

24                   Q. Okay. Unlike the timber management  
25      plan?

1 A. That's right.

2 Q. Okay. And would you agree with me  
3 then that if they have this level of comfort in a  
4 document such as a DLUG and that is translated down to  
5 the timber management plan, then a rigid reserve allows  
6 this particular group a level of comfort that a static  
7 reserve doesn't give them for all the reasons you have  
8 just explained?

9 A. Madam, this is evolutionary process,  
10 this is something which going to be based on many ifs  
11 and so on, and it seems to me, dealing with these  
12 people for many years, it seems like the people will  
13 change and will adopt the ideas of progressive or  
14 better management if you convince them it's being done  
15 ones, twice before so they have confidence in the  
16 process, Madam.

17 Q. And just so I can correct myself, Mr.  
18 Marek, I believe I just said in that question a rigid  
19 versus static.

20 A. I see.

21 Q. I should have said rigid versus  
22 variable. I apologize. I mislead you.

23 A. Okay.

24 Q. And if you have a rigid reserve, then  
25 you also don't have to continue with negotiations in

1 relation to this reserve in terms of participation in  
2 the timber management planning process?

3 A. Madam, do I understand that - correct  
4 me if I am wrong there - are you telling me that this  
5 is a kind of very static process and that people going  
6 to always protect and hang on the kind of rigidity of  
7 having areas totally protected in the form of reserves?

8 Q. What I'm suggesting is that in some  
9 instances having - and I would think you would agree  
10 with this - having a rigid or a static reserve provides  
11 not only a better level of protection but gives a  
12 particular group--

13 A. Comfort of having that rigid thing?

14 Q. --comfort because of the rigidity of  
15 the rule?

16 A. Don't touch.

17 Q. That's right.

18 A. Okay. You talk about so-called don't  
19 touch syndrome I call it, Madam, perhaps --

20 Q. Yes.

21 A. Don't touch syndrome is something  
22 frequently based on misinformation, on not proper  
23 scientific understanding of dynamics of forest, and  
24 while I fully justify, fully justify this don't touch  
25 syndrome in specific areas, in specific conditions, and

1 again I throw in many, many qualifications to that, in  
2 many instances of course it should be improved beyond  
3 because we can achieve probably in many instances  
4 much -- not better forest, but a forest which was there  
5 before by manipulating gently and manipulating in such  
6 a way that actually the results will be to better  
7 forest as we leave it abandoned.

8 And are you talking about abandoning,  
9 don't touch syndrome, and there are books written on it  
10 where we going to have choices to have these areas  
11 isolated and have it excluded out of any reaches of  
12 management, or are we going to manage it but in such a  
13 way that we achieve equal or perhaps in some cases  
14 better forest than we had before, and that's all I can  
15 tell you.

16 When I am dealing with the societies and  
17 pressure groups and I suppose here I'm speaking also of  
18 FFT as a pressure group, I also visualize the problem  
19 of where, when and how, and please do understand that  
20 we did not resolve these problem as yet. So that  
21 should answer your --

22 MS. SEABORN: Madam Chair, I see it's  
23 time for the morning break, and I have completed my  
24 cross-examination.

25 MADAM CHAIR: Thank you very much, Ms.

1 Seaborn.

2 Mr. Freidin?

3 MS. SEABORN: Thank you, Mr. Marek. I'm  
4 finished, Mr. Marek.

5 MADAM CHAIR: Mr. Freidin, you will be  
6 starting in 20 minutes?

7 MR. FREIDIN: Sure.

8 MADAM CHAIR: And your estimation right  
9 now, Mr. Freidin?

10 MR. FREIDIN: Two days, I originally said  
11 two days. I thought a day and a half ago that I was  
12 going to be less than a day, and working over the last  
13 day in preparing cross-examination, if I estimate less  
14 than two days I would be misleading.

15 MADAM CHAIR: All right. Well, the Board  
16 would just note that Ms. Cronk cross-examined very  
17 extensively and intensively.

18 MR. FREIDIN: I don't intend to review  
19 anything that she did.

20 MADAM CHAIR: We will be watching  
21 carefully to make sure you don't.

22 MR. FREIDIN: I'm sure you will, Madam  
23 Chair.

24 MADAM CHAIR: Thank you.

25 ---Recess taken at 10:25 a.m.

1 ---On resuming at 10:45 a.m.

2 MADAM CHAIR: Please be seated.

3 Mr. Marek, the Board would remind you  
4 that you can answer yes and no to questions and don't  
5 feel that you have to elaborate on any areas that you  
6 have already gone over.

7 THE WITNESS: I didn't hear you, I'm  
8 sorry. We have a problem with my left ear.

9 MADAM CHAIR: The Board is just reminding  
10 you that you can answer yes or no to the questions and  
11 don't feel that you have to elaborate, you have gone  
12 over much of your evidence in considerable detail, so  
13 if there is a new area that Mr. Freidin touches on,  
14 then certainly say what you want to say about it and,  
15 otherwise, you can keep your answers very brief.

16 Mr. Freidin?

17 CROSS-EXAMINATION BY MR. FREIDIN:

18 Q. Okay. Mr. Marek, maybe we should  
19 just start off and hopefully make things go more  
20 smoothly if you can get the following documents in  
21 front of you. We need the witness statements for both  
22 Beardmore and --

23 A. Yes, I have it in front of me.

24 Q. All-right. The terms and conditions  
25 proposed by Forests for Tomorrow, silvicultural

1 prescriptions, Exhibit 1416. Do you have that in front  
2 of you?

3 A. Yes, yes, yes.

4 Q. All right.

5 A. Yes, I have the FFT draft terms and  
6 conditions.

7 Q. All right. And I think for the first  
8 part of this cross-examination then, and if you have  
9 the articles that I indicated that I would dealing  
10 with.

11 A. On strip cutting.

12 Q. There's the two Jeglum articles which  
13 have yet to be made exhibits, and there is the Carleton  
14 article, could you get that in front of you, which is  
15 Exhibit 1525.

16 A. Well, I got it here someplace in the  
17 pile.

18 MADAM CHAIR: Go ahead, Mr. Freidin.

19 MR. FREIDIN: Q. I would like to  
20 commence with a couple of matters of clarification,  
21 firstly in relation to this concept or term normal  
22 operations.

23 A. Yes.

24 Q. The way you use that term, I  
25 understand that you do not include modified harvest

1 cutting, strip cuts, block cuts and group seed trees in  
2 the term normal operations when you use that term?

3 A. Yes, I do.

4 Q. You do?

5 A. Yeah, I do.

6 Q. So when we read your evidence, normal  
7 operations, we can assume that you have included that  
8 in the term?

9 A. Normal operations.

10 Q. All right. I would like to deal just  
11 firstly with the matter that just arose at the end of  
12 the cross-examination re Beardmore. Could you turn to  
13 Exhibit 1528.

14 MS. SWENARCHUK: That is the Beardmore  
15 witness statement?

16 MR. FREIDIN: Beardmore witness  
17 statement.

18 Q. Turn to page 49, please.

19 A. Yes.

20 Q. This is a letter from Mr. Odorizzi,  
21 who is President of the Beardmore-Lake Nipigon Watchdog  
22 Society, to the MNR dated July the 11th, 1989 in  
23 relation to the 120-metre no-cut reserve issue?

24 A. Yes.

25 Q. And in the fourth paragraph Mr.

1 Odorizzi states:

2 "The introduction of active management in  
3 the area in question is synonymous to us  
4 with large area clearcutting..."

5 A. Yes.

6 Q. "...removal of the total timber  
7 resource followed by possible planting,  
8 necessary herbicide spraying even along  
9 water courses...", et cetera.

10 A. Yes.

11 Q. So can we agree then that at the time  
12 this letter was written the concern by the Society  
13 about active management in those reserves as was being  
14 proposed or the possibility of management, was that  
15 they were equating active management with large area  
16 clearcutting as described?

17 A. Yes.

18 Q. And I understand from your evidence  
19 in the last few days that the Society now are basically  
20 saying they do not want any operations whatsoever in  
21 that 120-metre reserve?

22 A. That is correct.

23 Q. And am I to understand that that is  
24 based still on their fear that active management would  
25 result in large area clearcutting as described on page

1 49?

2 A. That is correct.

3 Q. If they were convinced - and it may  
4 not be possible - but if they were convinced that  
5 really what might take place is the taking out of the  
6 odd sawlog which would have no effect on the visual  
7 effect, if they were convinced of that--

8 A. Yes?

9 Q. --that may be something that they  
10 would be agreeable to?

11 A. I don't think so.

12 Q. Why not?

13 A. Because they feel that still the  
14 so-called normal operation will do some damage to the  
15 Lake Nipigon.

16 Q. And what sort of damage are they  
17 concerned about that might occur if only the odd sawlog  
18 was taken out of that 120-metre reserve?

19 A. Well, sawlogs, you cannot just get  
20 it. Sir, you cannot take sawlogs just without  
21 transporting someplace; in other words, you have to  
22 have access, and if you are talking about the access  
23 into the area of lowland especially north of Lake  
24 Nipigon the area -- perhaps we should go and get that  
25 map.

1 Q. That's okay.

2 A. Just for the benefit. You will -- or  
3 matter of fact, recently Domtar decided to operate some  
4 of this area by modified cutting, you still have an  
5 impact on the Lake Nipigon shoreline and back through  
6 the water erosion and so on, so obviously once you  
7 start accessing wood, you have more than just taking  
8 sawlogs out.

9 Q. I understand your evidence, thank  
10 you.

11 A. Okay.

12 Q. Could you turn to page 6 of the  
13 witness statement for Forests for Tomorrow, Exhibit  
14 1514.

15 A. Roman six? Six?

16 Q. Page 6. No, Arabic six.

17 A. Yes?

18 Q. You have the -- in relation to the  
19 definition of small area clearcut management--

20 A. That's right.

21 Q. --you indicated to the OFIA in  
22 Interrogatory No. 12 that the size of the area which  
23 falls within this definition varies with species and  
24 site; is that correct?

25 A. Are you quoting the paragraph 2,

1 small area clearcut management at page 6?

2 Q. All right. Yes.

3 A. Okay.

4 Q. You were asked in Interrogatory 11(b)  
5 by the Industry--

6 A. Yeah.

7 Q. --"Is there a range of area sizes  
8 which the witness suggests falls  
9 within this definition? Please clarify  
10 by reference to specific site types  
11 and relevant species."

12 A. Yeah. How did I clarify it?

13 Q. All right. Let's make sure then. Go  
14 to Exhibit 1535, please, which are some  
15 interrogatories.

16 A. What page is that?

17 Q. It's at Tab No. 2.

18 MS. SWENARCHUK: Tab 2?

19 MR. FREIDIN: Yes.

20 THE WITNESS: 2, okay.

21 MR. FREIDIN: Q. Page -- the very first  
22 page.

23 A. 11?

24 Q. Yes, 11.

25 A. Yeah.

1 Q. You see at the bottom 11(b)?

2 A. Yes.

3 Q. You were asked:

4 "Is there a range of area sizes which the  
5 witness suggests falls within this  
6 definition?" That's down at the bottom  
7 of the page.

8 A. Yes?

9 Q. And you indicated.

10 "The definition...", no, I'm sorry. It  
11 says:

12 "The definition does include a range of  
13 sizes."

14 A. Yeah, of course, small area --

15 Q. And the range of sizes --

16 A. Yes?

17 Q. Where do we find those?

18 A. The definition does not -- does  
19 include the range of sizes, yes.

20 Q. Any quantified numbers?

21 A. Well, I think it's very quantified in  
22 the prescriptions--

23 Q. All right.

24 A. --submitted by FFT there.

25 Q. So that's the quantification of the

1 sizes that we're referring to?

2 A. To some degree. Perhaps, counsel, we  
3 shouldn't argue now about cookbook syndrome again. So  
4 it indeed, in any small area clearcut management, as we  
5 know, includes a range of sizes of clearcut areas,  
6 patches, strips and so on. There is all kind of  
7 choices there depending on, again, on condition which  
8 has been testified to here.

9 Q. All right. And if we go up to the  
10 top of the page to 11(b) just above the word  
11 'supplementary', where you indicate that:

12 "The size to which the definition applies  
13 is site and species specific."

14 A. That's right.

15 Q. That is the evidence that you have  
16 already led? You have dealt with all that in your  
17 evidence?

18 A. Yes.

19 Q. Does that refer to the FFT terms and  
20 conditions?

21 A. Yes, yes.

22 Q. Mr. Marek, you answered an  
23 interrogatory from the Ministry of Natural Resources  
24 and indicated that small area clearcut management --  
25 pardon me:

1 "That it was not necessary for a cut-over  
2 to be regenerated through natural  
3 regeneration to qualify as small area  
4 clearcut."

5 Do you agree with that proposition?

6 A. Well --

7 MS. SWENARCHUK: Could Mr. Marek see the  
8 question and answer. Let's have it clear.

9 MR. FREIDIN: Q. I reproduce it, I  
10 thought it would be no problem. I will just read it to  
11 you. MNR No. 12 says in relation to small area  
12 clearcut management, 12(c):

13 "Is it necessary for a cut-over to be  
14 regenerated through natural regeneration  
15 to qualify as a small area clearcut?"

16 And you said:

17 "No."

18 Now --

19 A. In other words, you are giving --  
20 Madam Chair, I have to qualify this otherwise we are  
21 going to be turning in circles here.

22 Q. I know.

23 A. Are you suggesting, counsel, that any  
24 cut-over can be renewed by two ways, natural or  
25 artificial, because that is the kind of option I see

1 here from forest renewal.

2 Q. No. The question was:

3 "Is it necessary for a cut-over to be  
4 regenerated through natural regeneration  
5 to qualify as a small area clearcut?"

6 You said:

7 "No."

8 A. No, because there are two options,  
9 you can renew it artificially and naturally.

10 Q. All right.

11 A. Depending --

12 Q. Let me change the question then. Is  
13 it necessary for a cut-over to be regenerated through  
14 natural regeneration to qualify as small area clearcut  
15 management?

16 A. Exactly.

17 Q. Ah, all right.

18 A. May I lead you --

19 Q. Yes? The answer is yes?

20 A. Yes, but may I lead you to the No. 2  
21 small area clearcut management definition so we going  
22 to go in a circle again, which means the biological  
23 consideration, the physiological needs have to be  
24 considered, okay?

25 Q. I understand that.

1 A. Okay.

2 Q. But you have given a lot of evidence  
3 about small area clearcut management.

4 A. Yes.

5 Q. And you've been talking about strip  
6 cutting and block cutting and the like.

7 A. May be part of this whole area  
8 clearcut management.

9 Q. All right. I want to know, when you  
10 talk about small area clearcut management--

11 A. Right.

12 Q. --is it necessary that the clearcut  
13 be regenerated naturally, or can you practice small  
14 area clearcut management and have artificial  
15 regeneration as well?

16 A. Exactly. I said that five minutes  
17 ago.

18 Q. All right. Can you have small -- if  
19 you do artificial regeneration as your first attempt;  
20 in other words, can you have a cut-over, decide that  
21 you want to regenerate it artificially because you feel  
22 that's the best way to do it, that's in the best  
23 interest of the forest.

24 A. Yes.

25 Q. So you don't even try natural.

1 A. Yes.

2 Q. Does that qualify as small area  
3 clearcut management in your terminology?

4 A. Small area harvesting management.  
5 Madam, we have a problem with terminology.

6 Q. Well, you have used the word small  
7 area clearcut management. If there's difference now,  
8 if small area harvest management is something  
9 different --

10 A. Exactly. Harvesting or silviculture  
11 prescription, there are two different things.  
12 Harvesting prescription is a small area clearcut,  
13 management implemented then by artificial or the  
14 natural regeneration.

15 So what are we talking about here, sir,  
16 is this: That after harvesting of any, you can do it  
17 naturally, you can do it artificially.

18 Q. All right. When you say any  
19 harvesting, you're saying any method, open clearcut,  
20 strip cuts, block cuts, anything?

21 A. That's correct.

22 Q. Okay, I agree with that. So can --  
23 now, small area clearcut management. Let's go back,  
24 small area clearcuts then--

25 A. I have it in front of me.

1 Q. All right.- What qualifies as a small  
2 area clearcut then in your definition?

3 A. Sir, a silvicultural prescription  
4 where the harvest takes into consideration the  
5 biological and physiographic needs of the site and  
6 ecological characteristics of the species to be  
7 reproduced.

8 Q. Yes.

9 A. Which can be done, in this case can  
10 be done artificially, can be done naturally.

11 Q. In your opinion, sir --

12 A. So it's harvesting technique--

13 Q. In your opinion --

14 A. --applied to silvicultural  
15 prescriptions later on.

16 Q. In your opinion, sir, could you have  
17 an open clearcut regenerated artificially?

18 A. Yeah.

19 Q. Are there circumstances where that  
20 could in fact be small area clearcut management?

21 A. If it considered biological -- again,  
22 please, read it.

23 Q. All right. So do you believe that  
24 there are circumstances, sir, in which the biological  
25 and physiographic needs of the site and the ecological

1 characteristics of the species to be reproduced can be  
2 sufficiently taken into account and addressed by open  
3 clearcuts followed by artificial regeneration?

4 A. No, because --

5 Q. No? The answer is no?

6 A. No.

7 Q. All right.

8 A. Because do not consider biological  
9 consideration, please. How can open clearcut, large  
10 area clearcut qualify for this is beyond me because it  
11 stipulates clearly, sir, here that biological  
12 consideration plus the other consideration must be, and  
13 large area clearcut does not do that.

14 Q. All right. But a strip cut which was  
15 regenerated artificially would qualify?

16 A. As harvest, small area clearcut  
17 harvesting would apply to it.

18 Q. Followed by --

19 A. Even artificial regeneration because  
20 you may not have natural regeneration taking place in  
21 the first place and then you have to artificially  
22 regenerate it. So the answer is yes.

23 Q. Thank you.

24 A. Madam Chair, it's obvious that the  
25 counsel and the foresters have a problem with

1 definition of small area clearcut management and I  
2 don't blame them because it's a new term which has been  
3 introduced partially by forester who are concerned  
4 about the biological consequences and also harvesting  
5 methods, and I think that perhaps the confusion will  
6 exist until we agree what really small area clearcut  
7 entail, term, is all about because nobody used it as  
8 yet.

9 Q. Definition of sustained yield appears  
10 on page 6 as well.

11 A. Yes.

12 Q. And MNR 13 which appears at Tab 1 of  
13 OFIA's exhibit book.

14 A. Is that this one, big one, black one?

15 Q. The big one with the tab numbers.

16 A. Yeah, call it black book, please.

17 Q. Black book.

18 A. Please.

19 Q. Tab No. 1.

20 A. Tab No. 1.

21 Q. Go through the -- it's the...

22 A. What page?

23 Q. Well, there are no page numbers. The  
24 bundles -- it's the second bundle of documents -- the  
25 third bundle of documents which says, MNR.

1 A. MNR re FFT Panel 3?

2 Q. That's right.

3 A. No. 3, 8, 10 and 13.

4 Q. Would you turn to Interrogatory 13.

5 A. Yes.

6 Q. You were asked to define the term  
7 primary biological products.

8 A. Correct.

9 Q. Sustained yield, as you know, was  
10 defined as being the ability to sustain production of  
11 primary biological products--

12 A. Right.

13 Q. --in terms of yield and quality.

14 A. Yes.

15 Q. And your answer was in this context  
16 of sustained yield timber management:

17 "Primary biological products are the  
18 merchantable tree species."

19 A. That's right. We dealt with that  
20 issue a few minutes ago.

21 Q. Now, when you were discussing -- when  
22 you mean merchantable tree species, do you mean  
23 merchantable in the context of the Crown Timber Act?

24 A. In Crown Timber Act and future  
25 requirement for "merchantable" trees which would be

1 utilized by all Industry and so on.

2 Q. All right. And --

3 A. There is a time element involved.

4 Q. Right. When Ms. Seaborn was  
5 questioning you on relation to Exhibit 1416, which are  
6 Forests for Tomorrow's terms and conditions--

7 A. Yes.

8 Q. --and she directed you to term and  
9 condition 1.1(g).

10 A. Yes.

11 Q. Which says:

12 "Prohibit harvesting on sites that cannot  
13 be naturally or artificially regenerated  
14 to the primary species."

15 A. Yeah.

16 Q. I understood your evidence to be that  
17 primary species in that context were species which are  
18 now or which might in the future be desirable to  
19 Industry?

20 A. That's correct. But please qualify  
21 the present specie composition. If primary species are  
22 now black spruce or jack pine on these sites mentioned  
23 by Ms. Seaborn there, then of course I consider them  
24 primary species at that moment, at that near future.

25 Q. Leaving aside this issue of what you

1 have to regenerate the site to--

2 A. Yeah.

3 Q. --am I correct that primary species  
4 as referred to in condition 1.1(g) means species which  
5 are presently or which may in the future be desirable  
6 to Industry?

7 A. That is correct.

8 Q. And when you use the term primary in  
9 the definition of sustained yield; i.e., the production  
10 of primary biological products, which now you have said  
11 is merchantable tree species, does primary have the  
12 same meaning?

13 A. Yes.

14 Q. I want to deal with this issue of  
15 strip cutting and the results which have been obtained  
16 with them in a little bit more detail.

17 A. Yes. I have the document in front of  
18 me.

19 Q. Okay. Now, Mr. Clemmer - and I don't  
20 think you have to refer to this, if you do you can -  
21 Mr. Clemmer in an article that you referred to in your  
22 source book, the 1979 report--

23 A. Yes.

24 Q. ---stated that:

25 "Within the limits of this study

1 competition is the easiest variable to  
2 examine and perhaps one of the most  
3 important in cut-over development."

4 A. That is correct.

5 Q. And you agree with that?

6 A. Yes.

7 Q. "Competition in terms of what is  
8 going to come back on the site and the  
9 species which will be successful on the  
10 site--"

11 A. Occupy.

12 Q. "--is one of the most important  
13 in cut-over development."

14 A. Occupy the site, correct.

15 Q. Okay. When you use a natural  
16 regeneration method after a modified harvest--

17 A. Yes.

18 Q. --and, by the way, when I use  
19 modified harvest I'm talking about strips, blocks, or  
20 or group seed trees?

21 A. Yes, yes, I understand.

22 Q. All right. Just so we are on the  
23 same wave length.

24 A. Right.

25 Q. When you use a natural regeneration

1 method after modified harvesting, you have indicated  
2 that site preparation of some extent is essential.

3 A. Absolutely. In majority of cases.  
4 In some cases not, however, in majority of cases,  
5 depending again site and forest flora and the  
6 condition, yes.

7 Q. All right. So in some cases site  
8 preparation is not necessary?

9 A. In some cases it's not necessary,  
10 correct.

11 Q. Where site preparation does occur,  
12 does it make receptive seedbeds for aspen as well as  
13 conifer?

14 A. Any site preparation, any  
15 rejuvenation or regeneration capacity of the soils  
16 applies to that, that is why I put it here on the  
17 board.

18 Q. Do you agree that site preparation  
19 for the purposes of promoting the regeneration of  
20 conifer species also has perhaps the undesirable effect  
21 of creating good seedbeds for aspen?

22 A. Yes.

23 MR. FREIDIN: Madam Chair, I would like  
24 to make as exhibits two articles which I provided to  
25 Mr. Marek and he has reviewed.

1                   The first one is a 1982 report, it's  
2   entitled -- and you have got them bound together, Madam  
3   Chair, I think they should be marked separately, and I  
4   put a yellow sticker where the second document starts.

5                   The first document is: Strip Cutting in  
6   Shallow Soiled Upland Black Spruce Near Nipigon,  
7   Ontario, Regeneration in the First Study Area by Jeglum  
8   and it's a publication of the Great Lakes Forest  
9   Research Centre, Canadian Forestry Service, Department  
10  of the Environment, it's a 1982 report.

11                   MADAM CHAIR: 24 pages, Mr. Freidin?

12                   MR. FREIDIN: 24 pages in length, yes.

13                   MS. SWENARCHUK: 1585?

14                   MADAM CHAIR: Yes. Do you want both  
15  these articles to be -- oh, you want separate exhibit  
16  numbers.

17                   MR. FREIDIN: No, I want this one to be  
18  1585.

19                   MADAM CHAIR: That will be Exhibit 1585.

20   ---EXHIBIT NO. 1585: 24-page Article entitled: Strip  
21                               Cutting in Shallow Soiled Upland  
22                               Black Spruce near Nipigon,  
23                               Ontario, Regeneration in the  
24                               First Study Area by Jeglum,  
25                               publication of Great Lakes Forest  
                              Research Centre, Canadian  
                              Forestry Service, Department of  
                              the Environment, 1982.

MR. FREIDIN: And perhaps we could, with

1 your permission, as Exhibit 1586 a document entitled:  
2 Black Spruce Regeneration Trials Near Nipigon, Ontario,  
3 Planting versus Seeding, Lowlands versus Uplands,  
4 Clearcut versus Strip Cut, and it's a report by Wood  
5 and Jeglum. Again it is a document which does not  
6 appear to have -- it's 1984, sorry, again it's a  
7 publication by the Great Lakes Forest Research Centre,  
8 Canadian Forestry Service, Department of the  
9 Environment, and it is 19 pages in length.

10 MADAM CHAIR: Thank you. And that is  
11 Exhibit 1586.

12 MR. FREIDIN: Yes.

13 ---EXHIBIT NO. 1586: 19-page article entitled: Black  
14 Spruce Regeneration Trials Near  
15 Nipigon, Ontario, Planting versus  
16 Seeding, Lowlands versus Uplands,  
17 Clearcut versus Strip Cut, by  
18 Wood and Jeglum, publication  
by Great Lakes Forest Research  
Centre, Canadian Forestry  
Service, Department of the  
Environment, 1984.

19 MR. FREIDIN: Q. Mr. Marek, did you use  
20 the term taxonomy in your evidence.

21 A. Taxonomy, yeah, I use.

22 Q. Yes. What is that?

23 A. It's a part of botany, identification  
24 of plants, taxonomy.

25 Q. So if someone is an expert, or is a

1 taxonomist, they are an expert in identifying the kinds  
2 of species that would be there to be observed?

3 A. Plants, right.

4 Q. And I understand then that you  
5 indicated that, is it Dr. Jeglum, was a taxonomist?

6 A. That's right. He's got a degree,  
7 doctorate, Ph.D. in taxonomy.

8 Q. And now if I could first refer you to  
9 Exhibit 1585. I understand that this is a study which  
10 was done on strip cuts in the Lake Nipigon area, in  
11 fact it was in the Thimble Creek strip cut area.

12 A. Correct.

13 Q. Which you described earlier in your  
14 evidence?

15 A. Yes.

16 Q. And so this is in the area of the  
17 operational trials which were conducted by CFS, by the  
18 Black Spruce Working Group?

19 A. One of three.

20 Q. One of them?

21 A. One of three.

22 Q. Yes. And this was done in -- this  
23 study would have taken place in 1982?

24 A. Right.

25 Q. Would you go to page No. 12, please,

1 where we have Table No. 5.

2 A. Yes.

3 Q. And the table is entitled: The  
4 Effects of Leave Time on Regeneration of the Five Main  
5 Species.

6 A. Yes.

7 Q. And would you agree with me in  
8 general that what this table does, that it looks at the  
9 stocking and density of the various species of trees in  
10 the left-hand column?

11 A. Yes.

12 Q. Pre-harvest, and then based--

13 A. After harvest.

14 Q. --based on assessments made in four  
15 consecutive years after harvest indicates--

16 A. That is correct.

17 Q. --how the stocking and the density  
18 have changed?

19 A. That is correct.

20 Q. We note in the top of the graph on  
21 the left-hand side there's a headings, says: Species  
22 and Stocking Density per 2-metre by 2-metre quadrat.

23 A. Yeah, milliquadrat.

24 Q. All right. And does that equate to  
25 2,500 milliquadrats per hectare? My understanding is

1       that it does.

2                   A. Well, see milliquadrat have different  
3 sizes, so probably you are right.

4                   Q. All right. It's in that vicinity.

5                   A. Because one of the milliquadrats is  
6 based on the old one, and hectares of course is the new  
7 measure, so...

8                   Q. All right. So we're in the ballpark  
9 2,500 milliquadrats per hectare?

10                  A. No. Doesn't make any difference here  
11 anyway.

12                  Q. It makes a difference for the purpose  
13 of my questioning.

14                  A. Okay.

15                  Q. Are we in the ballpark at 2,500?

16                  A. Okay.

17                  Q. Yes?

18                  A. Yes.

19                  Q. Thank you. Am I correct, sir, that  
20 the total size of Thimble Creek was 50 hectares?

21                  A. The area total was 50 hectares.

22                  Q. Is that correct?

23                  A. That's correct.

24                  Q. Am I correct that approximately half  
25 of it was cut because it was a two-coup system?

1 The initial harvest, approximately half of that 50  
2 hectares would have been cut?

3 A. Yes. There is a picture of it here  
4 on the back.

5 Q. Right. There's a picture of it on  
6 page 5, but we can agree that about 50 per cent of that  
7 50 hectares would have been cut in the harvest which  
8 took place and on which the assessments were made?

9 A. Yes.

10 Q. If you use the 1980 figures -- go  
11 down to the second column of this, the horizontal  
12 column of this table, it says number of quadrats.

13 A. Yes.

14 Q. And you see starting after harvest  
15 they get 565 quadrats in '76 and the smallest number is  
16 265 over in 1978 and in 1980?

17 A. Yes.

18 Q. All right. Quadrats means the same  
19 thing as plots?

20 A. Yes.

21 Q. Let's deal with the smallest number  
22 of plots. My calculation, sir, indicates that if we  
23 try to work out the number of plots that would have  
24 occurred in a square mile, based on 265--

25 A. Plots as established.

1 Q. --plots, that we end up with 2,828 --  
2 pardon me 2,826 plots per square mile?

3 A. Are you trying to ask me yes or no?

4 Q. I am, and if you want to go through  
5 the arithmetic, I would ask you to confirm it for me.

6 A. Well, I am not desire to go into it,  
7 but I believe you.

8 Q. I will provide you with the  
9 calculations over the lunch break, they are very short,  
10 there's only three lines, and I'm going to ask you to  
11 verify my mathematics, sir.

12 On the assumption that I am correct,  
13 would you agree with me that the number of quadrats  
14 which were used in this study--

15 A. Yes.

16 Q. --2,826 are considerably more than  
17 the one or two plots per square mile that you suggested  
18 in your evidence were used on your 1967 or '69  
19 clearcuts which were the subject matter of exhibit --  
20 photo 101 and 102; yes or no?

21 A. Yes.

22 Q. All right.

23 A. But may I qualify this, Madam? We  
24 are getting into games again here, that when I have  
25 stated after Mrs. Cronk examined or re-examined me that

1       there were one or two, I am not sure of it either. I  
2       said there may be one or two or three plots established  
3       over there. So I will not quibble about that.

4                   Q. You said one or two per square mile,  
5       and I'll give you the benefit of the doubt.

6                   A. Exactly.

7                   Q. You can say 20 per square mile, sir.

8                   A. Exactly. So that's what I want to  
9       qualify.

10                  Q. But here we've got 2,826 plots per  
11       square mile, considerably more than what you described  
12       as not very many.

13                  A. Correct.

14                  Q. Okay.

15                  MADAM CHAIR: But, Mr. Freidin, I thought  
16       Mr. Marek's comments had to do with the surveys that  
17       were backing up the silvicultural assessment data, not  
18       the number of plots that were pertaining to an  
19       experimental area?

20                  MR. FREIDIN: The evidence was that the  
21       number of plots which were used and which the witness  
22       was suggesting formed the basis of the silvicultural  
23       information system records were one or two, was his  
24       evidence, per square mile.

25                  I am taking this witness to studies in

1 the same area which were done at a later time on  
2 different cuts, and if there is a problem with the  
3 reliability of records, stocking records based on the  
4 number of plots - which is the suggestion made by this  
5 witness - I am taking this witness to a report which  
6 had 2,826 plots per square mile and not the one or two  
7 that he suggested.

8 MADAM CHAIR: But this evidence doesn't  
9 tell the Board that across the area of the undertaking  
10 whenever the silvicultural assessments done that number  
11 of plots --

12 MR. FREIDIN: Oh, I'm not concerned about  
13 the number that are done normally, that may be a matter  
14 of simply reply evidence, I want to look at the results  
15 that are recorded as a result of these plots. I'm  
16 not --

17 MADAM CHAIR: Well, that --

18 MR. FREIDIN: I understand your point,  
19 Madam Chair.

20 MADAM CHAIR: Okay, fine, thanks. Let's  
21 go ahead.

22 THE WITNESS: Okay, fine.

23 MR. FREIDIN: Q. Would you agree, sir,  
24 that the stocking results show less than 80 per cent  
25 stocking on those strip cuts?

1 A. Correct, yes.

2 Q. -In terms of the composition changes,  
3 and these -- by the way, this study dealt with natural  
4 regeneration on these strips?

5 A. That is correct.

6 Q. Would you turn to page 15, please, of  
7 the report.

8 A. Correct.

9 Q. Under the heading: Compositional  
10 Changes--

11 A. Yes.

12 Q. --it states:

13 "The pre-cut forest was conifer dominated  
14 with 89 per cent relative stocking and  
15 density--"

16 A. Yes.

17 Q. "--in comparison with 11 per cent  
18 for hardwoods, however, in the post-cut  
19 regeneration five years after cutting the  
20 proportions have changed dramatically to  
21 about half conifers and half hardwoods."

22 A. Yes.

23 Q. "This increase in hardwoods is due  
24 Largely to white birch and trembling  
25 aspen."

1 A. That's correct.

2 Q. And you would agree that's an  
3 accurate reflection of what the results show?

4 A. Yes.

5 Q. Go back to Table No. 5.

6 Q. On page what, 13?

7 Q. Page No. 12.

8 A. 12, yes.

9 Q. To get some appreciation of what  
10 happened in terms of competition and whether in fact  
11 aspen does occur on strip cuts--

12 A. Mm-hmm.

13 Q. --would you agree, sir, that the  
14 stocking of trembling aspen increased almost 500 per  
15 cent?

16 A. Yes.

17 Q. From 8 per cent to 38?

18 A. Yes.

19 Q. That white birch increased not as  
20 much from 36 to 54?

21 A. Yes, yes, I agree with you.

22 Q. All right. And jack pine increased  
23 from 1 to 19?

24 A. I agree with Jeglum, yes.

25 Q. All right. Now, in Exhibit No. 1416,

1 if we turn to page No. 2 --

2 A. Is that the same report you are  
3 talking about?

4 Q. No, Exhibit 1416 are the  
5 silvicultural prescriptions by Forests for Tomorrow.

6 MS. SWENARCHUK: 1416 or 1416A, Mr.  
7 Freidin?

8 MR. FREIDIN: Oh, 1416A.

9 THE WITNESS: Okay. Just a second. Yes,  
10 go ahead. 1416A.

11 MR. FREIDIN: Q. In term and condition  
12 2.1.

13 A. Yes:

14 "For the purpose of this section,  
15 "extensive silviculture" means..."

16 Q. Just one moment, please. I will take  
17 you to that later. I will take you to that later,  
18 sorry.

19 Would you turn to page 23 of Dr. Jeglum's  
20 report.

21 A. Yes, 23.

22 Q. The last paragraph on the left-hand  
23 side of the page.

24 A. "The manager may decide..."

25 Q. Yes. It says:

1 "The manager may decide..."

2 A. Right.

3 Q. I want to see if you agree with me.

4 "The manager may decide to accept the  
5 change in composition on the assumption  
6 that more utilization of hardwoods will  
7 be the rule by the next harvest and/or  
8 simply because resources are limited."

9 A. Yes.

10 Q. "Whether the increased hardwood  
11 composition will be deleterious to black  
12 spruce growth or will benefit the spruce  
13 by providing some shade and also a better  
14 nutrient supply vis-a-vis nutrient  
15 pumping and leaf fall is not known. It  
16 is not known either how well the  
17 hardwoods will grow on these shallow soil  
18 sites or whether they will provide good  
19 wood or fibre at the next harvest."

20 A. Yes.

21 Q. "These are some of the questions that  
22 need to be answered after further study  
23 of second growth forest in boreal  
24 cut-overs."

25 A. Right.

1 Q. We agree that Jeglum recognizes that  
2 in some situations hardwoods, in this case aspen, can  
3 be utilized and, therefore, is not a competitor in some  
4 situations?

5 A. Depending on your goals and  
6 objectives.

7 Q. All right. Would that ever be your  
8 goal or objective, to have aspen?

9 A. If I owned Canada's forest?

10 Q. If you owned what?

11 A. If you owned Canada's forest or  
12 Ontario's forest, what I would do? That's very  
13 important thing.

14 Q. If you're managing a stand that is  
15 composed of spruce and poplar, okay, would it be your  
16 view that it might be your objective that it would be  
17 all right to have some poplar come back?

18 A. First of all, in this case it was not  
19 poplar working group, it was spruce working group and  
20 that's one of the objectives and consideration which  
21 has to be given to it.

22 Q. And when you say spruce working  
23 group, what do you mean by that?

24 A. Sb 16, poplar 2, birch 1 and so on.

25 Q. How low can Sb, black spruce go and

1 still be a black spruce working group according to your  
2 definition?

3 A. Well, that's very well-known through  
4 the inventory what classification of working group  
5 means and I don't want to go into it because we will  
6 again start.

7 Q. Okay, we will rely on the inventory.  
8 Okay. Now --

9 A. You ask me the question, I didn't  
10 answer yet, sir.

11 Q. All right, then answer then.

12 A. Because you ask me what I would do,  
13 and my answer to you, Madam Chair, is this, and I went  
14 through it in previous testimony. If we have a spruce  
15 working group representing mainly by -- mainly  
16 association of black spruce with some other species, of  
17 course my goal would be as a manager to perpetuate the  
18 black spruce working group.

19 Q. All right.

20 A. Especially on the sites as described,  
21 shallow sites, shallow soils over bedrock, surely I  
22 would try to establish new working group based on  
23 poplar or, for that matter, any other species.

24 Q. Could we turn to the 1984 report,  
25 please.

1                   A. Just a second. You are talking about  
2 the 1984 black spruce regeneration trials near Nipigon?

3                   Q. Yes, Exhibit 1586.

4                   A. Page what?

5                   Q. Pardon me, which page? Well, would  
6 you also get out your spruce silvicultural guide which  
7 is Exhibit 382.

8                   A. He's talking about this one?

9                   Q. Oh, you've got this one too, Mr.  
10 Marek.

11                  A. I have the spruce guideline, of  
12 course I have, yes.

13                  Q. Okay. Could you turn to page 26 of  
14 the spruce guide, please.

15                  A. Yes.

16                  Q. Did we agree -- go to page 27 at the  
17 top.

18                  A. Oh, 27.

19                  Q. I'm sorry.

20                  A. Yes.

21                  Q. Do you agree with the comments  
22 starting at the end of the first line that:

23                         "On sites with heavy grass competition  
24 snow and ice can pack down the grasses  
25 and crush seedlings."

1 A. Yes.

2 Q. Do you agree that black spruce is a  
3 very sort of slow grower, I think you used the word  
4 conservative grower.

5 A. Conservative, correct. That's not my  
6 term, that's from the scientific literature which  
7 frequently used the conservative quote.

8 Q. Which means that they're fairly small  
9 in the early years, they don't grow rapidly like--

10 A. That's correct.

11 Q. Put on height increment like jack  
12 pine?

13 A. Like jack pine or poplar, that's  
14 correct.

15 Q. Okay. In this document here, Mr.  
16 Marek, Exhibit 1586.

17 A. Yes.

18 Q. Would you turn to page 12, please,  
19 and 13, I am going to deal with both.

20 A. Yes. Yes, okay.

21 Q. And I want to direct your attention  
22 on page 13 to Table No. 8.

23 A. 13. Page 13, figure..?

24 Q. Table 8 at the bottom.

25 A. Yes. Table 8, yes.

1 Q. And this table indicates the types of  
2 vegetation--

3 A. That is correct.

4 Q. --that appeared on the upland and  
5 lowland portions--

6 A. Yes, yes.

7 Q. --on the one hand where you had done  
8 a clearcut and the one hand where you did a strip cut?

9 A. Yes.

10 Q. And in relation to gramanoids, which  
11 is the second one, am I correct that those are grasses?

12 A. Yes.

13 Q. And in the strip cut, if we look at  
14 the second line would you agree, sir, that in the  
15 uplands there were more grasses on the strip cuts than  
16 after a clearcut?

17 A. Yes, yes.

18 Q. And in the lowland the same situation  
19 happened, you had more grasses in the strip cut than in  
20 the lowlands?

21 A. That is correct.

22 Q. In the case of the strip cuts it  
23 occupied 19.2 per cent of the area?

24 A. Yes, yes.

25 Q. We agree then that at least in

1 relation to this factor, that although strip cutting  
2 may have benefits for natural regeneration that you  
3 have described--

4 A. Yes.

5 Q. --it has a disadvantage regarding  
6 competition from grasses and sedges which the  
7 silvicultural guides say can lead to seedlings being  
8 crushed with certain winter conditions?

9 A. May I qualify this statement, Madam,  
10 in order to understand what we are talking about?

11 Strip cuts in general will have an  
12 environment which is moister because presence of timber  
13 in the first place, whereabouts if you remove large area  
14 of timber you have a larger impact of  
15 evapotranspiration, the impact of solar radiation, so  
16 it becomes drier.

17 But in the strip cuts where this - and I  
18 talk, let's talk about fluxes here, I am going to  
19 introduce new term which is called fluxes - perhaps not  
20 new term but I had to go back to the term - which is in  
21 combination atmosphere, geological, biological, the  
22 chemical inputs.

23 In strip cut where some timber is remain,  
24 this total environment is affected and it is affected  
25 positively in one way, negatively in the other way;

1 positively that you have more moisture which is  
2 available for mineralization of nitrogen and also the  
3 better growth of the species in general, any species  
4 including black spruce, whereabouts on the larger area  
5 clearcut you are missing; in other words, these  
6 protective benefits are not there.

7                   The regeneration of any kind, in this  
8 case the gramanoids and other species are reacting to  
9 it and it just happen so that indeed black spruce going  
10 to face some serious competition by specie mentioned in  
11 the statement there. Now, is that positive, is that  
12 benefit, and here are the tradeoffs, no, larger area  
13 clearcut versus strip cutting and regeneration;  
14 natural, artificial and so on.

15                   But may I point out in this case, which I  
16 have discussed very tolerably with Mr. Jeglum and I  
17 work with him on this project, we have things which is  
18 called man's interference by site preparation, and by  
19 site preparation means that in low lying areas and  
20 upland areas the so-called site preparation effort are  
21 very crude, but can be very damaging and introduce  
22 species into the low lying area, like my learned friend  
23 has suggested there is so much grass coming in.

24                   Of course this can be avoided by better  
25 site preparation, understanding of some of these

1 conditions which we are preparing and, hence, modify in  
2 better way the regeneration or protection of black  
3 spruce. Thank you, Madam.

4 Q. So your evidence is that grasses can  
5 be avoided to some extent by better site preparation?

6 A. Better site preparation, correct.

7 Q. All right. Assuming that they can't  
8 be completely controlled, and they are more--

9 A. Because --

10 Q. --more prolific in the moist  
11 conditions of your strip cuts--

12 A. Exactly, correct.

13 Q. --than in the clearcut which is not  
14 as moist--

15 A. Not as moist, drier, dries out  
16 quickly.

17 Q. Right.

18 A. The water table.

19 Q. --would you agree then if one is  
20 looking at making a decision or weighing the advantage  
21 or disadvantage of strip cutting or clearcutting, that  
22 one has to realize that by strip cutting you may be  
23 creating a situation where you are going to actually  
24 engender the proliferation of grasses in comparison to  
25 what will happen in an open clearcut? That's a

1 factorthat has to be taken --

2 A. One of many factors.

3 Q. Right.

4 A. There are tradeoffs, okay. Yes.

5 Q. If you get grasses in a strip cut  
6 which caused competition--

7 A. Right.

8 Q. --for your seedlings, how do you deal  
9 with it?

10 A. Well, first of all, you can avoid  
11 that by better site preparation and better planning and  
12 prescription, that's No. 1, by better equipment, but if  
13 you get grasses, again the numbers is very important  
14 part.

15 If you get regeneration, prolific  
16 regeneration of black spruce some of them will die,  
17 sometimes majority of them die, but many survive  
18 because it's a game of numbers. So you have lots of  
19 regeneration, natural regeneration in this specific  
20 area, you depend strictly on the niches which will --  
21 or niches where black spruce will have a chance or  
22 niches where spruce won't have a chance, and that's  
23 observation thing, that's a game of...

24 Q. But where it doesn't happen, where  
25 the game of chance--

1 A. That's right.

2 Q. --turns out that you've got grasses  
3 which are causing say--

4 A. Smothering.

5 Q. --smothering your--

6 A. Natural regeneration.

7 Q. --seedlings, and that can happen?

8 A. That's right.

9 Q. How do you control the grasses?

10 A. We usually don't. My prescription  
11 here would be that if I have enough natural  
12 regeneration many of them will come through the grasses  
13 and will eventually occupy the site as a species which  
14 are required.

15 Q. Is the application of herbicides a  
16 method which - whether you like the use of herbicides  
17 or not - is a method which in fact can control grasses?

18 A. There are chemicals and simazine is  
19 one of them, there are many others where you can  
20 control grasses, but again, you see, one of the problem  
21 using chemical in this small area clearcut management  
22 to protect black spruce, it would probably affect the  
23 total system which is extremely sensitive, especially  
24 these low lying area of muck. So I wouldn't use it, I  
25 wouldn't use it.

1 I have done it, I admit we have done --  
2 matter of fact this project what we are discussing now  
3 has been treated by chemicals in order to find out what  
4 the results may be.

5 Q. But you agree that chemicals can in  
6 fact control grasses--

7 A. Yes.

8 Q. --that are causing a problem for  
9 seedlings?

10 A. They are in general use; aren't they?

11 Q. All right. The answer is yes?

12 A. Yes.

13 Q. Would you agree -- assume you have a  
14 black spruce seedling which has germinated from  
15 artificially applied seed, okay?

16 A. Correct.

17 Q. And you measure its total and  
18 incremental height growth?

19 A. Yes, yes.

20 Q. All right.

21 A. Yes.

22 Q. Do you agree or would the results  
23 that you would observe be indicative of what one could  
24 expect of a seedling on the same microsite that had  
25 originated from a standing black spruce tree? Do you

1 understand the question?

2 A. In other words, comparison of  
3 seeding, artificial seeding versus natural seeding in  
4 the microsite. Yes.

5 Q. And do you agree that it would be the  
6 same?

7 A. No, it wouldn't be the same.

8 Q. You couldn't compare the two?

9 A. Well, there is one comparison which  
10 is identical and, that is, that both come from seed,  
11 one from artificial sources, one from artificial  
12 technology, one from natural seed dispersal from the  
13 standing timber, yes.

14 Q. Right. But if you measured the  
15 height growth of the seedling which was put there by  
16 hand and it was, you know, so many centimetres in the  
17 first year, so many the second year, so many in the  
18 third year.

19 A. Yes, yes.

20 Q. Could one extrapolate from that and  
21 say, if that seed had been put there, not by hand but  
22 from a standing black spruce, that we could expect the  
23 same growth?

24 A. No.

25 Q. All right.

1                   A. I tell you why, and may I explain to  
2     you, Madam?

3                   Q. Well, I'm not too sure whether you  
4     have to explain why because I don't want to ask any  
5     more questions about it.

6                   A. May I explain point, because one is  
7     not coming from the site original, come from thousand  
8     miles away or hundred miles away; in other words,  
9     genetics, origin, play very important in growth.

10                  You ask me if I can identify growth, and  
11     I tell you, it makes a hell of a difference if that  
12     seed comes from Alberta or if that seed comes from the  
13     place where the trees are growing itself. So there is  
14     a genetic variation. That's why we have zones, that's  
15     why I identify some of these seed sources and so on,  
16     otherwise we are wasting our time, sir.

17                  Q. Right. The identification of seed  
18     sources is a method of trying to get around that  
19     problem?

20                  A. Exactly.

21                  Q. Okay. Thank you.

22                  A. So there is a difference in growth.

23                  MR. FREIDIN: One moment, please.

24                  Q. Could you refer to --

25                  A. Just a second. Have a patience, I

1 have to give my throat...

2 Q. Yes, no problem.

3 ---Discussion off the record

4 THE WITNESS: Yes, thanks.

5 MR. FREIDIN: Q. Now, in your  
6 cross-examination by Ms. Cronk I think you indicated  
7 that the results of scientific research should be used  
8 to form the basis of operational prescriptions?

9 A. Right.

10 Q. And I think you referred to--

11 A. Yes.

12 Q. --a couple of scientists, Mr.

13 Carleton being one--

14 A. Yes.

15 Q. --whose work was of the type that you  
16 felt could be used in that manner?

17 A. Not exactly in the same area, but  
18 very similar area east from area I'm tied up with this  
19 kind of research.

20 Q. Right. But he was one of the  
21 researchers who does the kind of work which you believe  
22 generally --

23 A. In the similar fields, yes, nutrient  
24 cycling and some of these things which you see on  
25 that...

1 Q. Okay. Would you refer to Exhibit  
2 1525 which is an article by Brumelis and Carleton?

3 A. Yes, yes. What page was that?

4 Q. Well, I just want to make sure you've  
5 got it.

6 A. Yeah, I have it here.

7 MADAM CHAIR: Where is it, Mr. Freidin?

8 MR. FREIDIN: That will be in one of --  
9 Oh boy. It wasn't in any of the source books, I don't  
10 believe. It was filed by Ms. Swenarchuk later in the  
11 hearing.

12 MS. SWENARCHUK: Yes. It was filed  
13 during Mr. Marek's direct examination.

14 MADAM CHAIR: So it's a separate...

15 MR. FREIDIN: It looks like this.

16 MS. SWENARCHUK: Scientific reprint,  
17 Madam Chair, it looks like this.

18 MADAM CHAIR: I don't have it. Do you  
19 have it? Okay, we've got it.

20 MR. FREIDIN: Q. Okay?

21 A. Yes.

22 Q. And the purpose of this study I  
23 understand was to look at a number of lowland black  
24 spruce sites on the Clay Belt?

25 A. That's correct.

1 Q. And they were looking at it to see  
2 what occurred as a result of logging disturbance?

3 A. Right.

4 Q. And they determined that there was a  
5 problem created with species coming back on the site  
6 other than black spruce after both horse logging and  
7 also I think after mechanical logging?

8 A. Yes.

9 Q. And that after mechanical logging  
10 they observed that there was an increase in competition  
11 because of the microsites which had been created?

12 A. Yes.

13 Q. And am I correct that the  
14 recommendation that they made to deal with that  
15 particular matter was not strip cutting?

16 A. That is correct.

17 Q. Right. That the recommendation that  
18 they made is found on the second last page of the  
19 exhibit.

20 A. Second -- that's page...?

21 Q. Well, the numbers are so faint. It  
22 looks like...

23 A. 1477.

24 Q. Yes.

25 A. Yes, I have it underlined here.

1 Q. And the part that I wanted to refer  
2 you to is about 12 lines or 13 -- 12 lines up. If you  
3 go to the left-hand side of the right-hand margin, it  
4 says:

5 "In contrast, the economically  
6 viable...", do you see where it says  
7 that?

8 A. On the left-hand side.

9 Q. I will count them up.

10 A. From the bottom?

11 Q. 14 lines up from the bottom.

12 A. "The legacy of mechanical  
13 logging...", starts the paragraph eh, is  
14 that where it starts:

15 "The legacy of mechanical..."

16 Q. No, 14 up from the heading,  
17 Acknowledgements. I'm sorry, see where it says  
18 acknowledgements?

19 A. On the right side.

20 Q. On the right side, come up 14 lines,  
21 see where it says:

22 "In contrast..."

23 A. "In contrast...", yes, I have it  
24 underlined here.

25 Q. All right. And it talks about p.

1       mariana, that's black spruce.

2                   A. Mariana.

3                   Q.  Mariana, I'm sorry, is black spruce?

4                   A.  Picea mariana, yes.

5                   Q.  Okay. So it says:

6                    "In contrast, the economically valuable  
7                   black spruce in this study is the most  
8                   stress tolerant, conservatively  
9                   growing and reproductive member of the  
10                  woody plant species pool."

11                  A.  That is correct.

12                  Q.  "The forest sites included in this  
13                  study are fundamentally fertile, but the  
14                  available nutrient decline with stand age  
15                  after disturbance as a result of the  
16                  accumulation of the peat in the  
17                  boreal..."

18                  A.  That's correct.

19                  Q.  "...and black spruce is clearly well  
20                  adapted to cope with such conditions."

21                  They conclude:

22                  "For these reasons, the maintenance of  
23                  an intact organic layer to perpetuate  
24                  nutrient poor conditions--"

25                  A.  Right.

1 Q. "--and the preservation of advanced  
2 growth augmented by the planting of  
3 tree seedlings at high density  
4 immediately after canopy removal--"

5 A. Yes.

6 Q. "--should be essential features of  
7 a regeneration program for black spruce  
8 in wetland habitats."

9 Q. And do I interpret -- well, my  
10 understanding of the Forests for Tomorrow terms and  
11 conditions--

12 A. Yes.

13 Q. --are that because of what it says in  
14 the terms and conditions about black spruce working  
15 group--

16 A. Mm-hmm.

17 Q. --you couldn't do what this scientist  
18 recommends and, that is, don't disturb the forest floor  
19 and augment what you don't get from advanced growth by  
20 planting?

21 A. No, no, I disagree because --

22 Q. All right. All right. Can you show  
23 me where -- it just may be a matter that I don't  
24 understand or interpret this correctly.

25 A. That's right.

1 Q. Where in the Forests for Tomorrow  
2 terms and conditions does it provide the opportunity to  
3 plant that lowland site?

4 A. I would not plant it.

5 Q. All right. So you disagree with the  
6 author--

7 A. Recommendation to be planted.

8 Q. --who you said is a scientist--

9 A. Yes.

10 Q. --whose recommendation should be used  
11 for prescriptions?

12 A. Yes, yes.

13 Q. All right.

14 A. Again --

15 Q. All right. Can we agree, sir,  
16 that --

17 MS. SWENARCHUK: Excuse me. I think  
18 clearly Mr. Marek had not completed his answer and I  
19 think he's entitled to do that.

20 MR. FREIDIN: All right. I think I'm  
21 going to give him an opportunity.

22 Q. Does Forests for Tomorrow's terms and  
23 conditions allow the planting of that site? Let's say  
24 somebody disagrees with you but agrees with this  
25 person, Dr. Carleton.

1 A. Terry Carleton.

2 Q. Does the Forest for Tomorrow terms  
3 and conditions allow one to do that? My reading of it  
4 says that you can't, and I may be wrong, but seeing you  
5 had a hand in doing this, maybe you can direct me to  
6 the section which tells me whether I can or whether I  
7 can't.

8 A. I will direct you on one statement  
9 which depends on advanced growth.

10 Q. I want you to --

11 A. No, no, he's stating advanced growth  
12 there, protection of advanced growth.

13 Q. All right.

14 A. And one of the problem --

15 Q. No, don't tell me the problem with  
16 the article, tell me where -- answer my question, if  
17 somebody wants to plant it, will the terms and  
18 conditions that you had a hand in drafting allow one to  
19 do it?

20 A. I wouldn't allow him to plant it.

21 Q. Do I take it then that your terms and  
22 conditions -- the terms and conditions that you had a  
23 hand in playing would not allow one to do it then in  
24 those circumstances?

25 A. Because I would depend on natural

1 regeneration.

2 Q. But you wouldn't allow the planting  
3 of black spruce as suggested by Carleton then, and your  
4 terms and conditions basically say exactly that, you  
5 can't do it; is that right?

6 A. No, sir, you are putting --

7 Q. Well --

8 A. Sir, as a forester I cannot put up  
9 with this kind of jargon, because it states very  
10 clearly here, No. 1 --

11 Q. In the Carleton article?

12 A. In the Carleton article.

13 Q. Yes?

14 A. That he's depending on advanced  
15 growth.

16 Q. Augmented by the planting of tree  
17 seedlings.

18 A. Augmented by planting; in other  
19 words, what he's saying, that the advanced growth will  
20 be destroyed, there is no other way to do anything, so  
21 we plant. And I agree, but -- okay, are we clear on  
22 that?

23 Q. Yes.

24 A. Okay. What I'm telling you, or  
25 trying to convince you, that there are other ways to do

1 it; in other words, I would depend on natural  
2 regeneration.

3 Q. Which is -- is advanced  
4 growthnatural --

5 A. Strip cutting where perhaps some  
6 advanced growth may be destroyed, may be destroyed, but  
7 again with careful logging we may do and augment that  
8 by natural regeneration from seed.

9 Q. Would you site prepare the area?

10 A. Strip cut.

11 Q. Site prepare the area?

12 A. In some cases I would, in some cases  
13 I won't. And this is so site-specific, sir, that I  
14 haven't got answer to you on this overall general  
15 statement and I'm sorry.

16 Q. If it's site-specific, do the Forests  
17 for Tomorrow terms and conditions allow you in one of  
18 those sites to plant the site in order to augment what  
19 you're going to get from advanced growth?

20 A. I don't know any recommendation where  
21 Forests for Tomorrow in their prescription is saying  
22 not to plant. What they are emphasizing, natural  
23 regeneration by small area clearcut management.

24 And if Mr. Carleton have seen the sites -  
25 and obviously he did study them, his students, matter

1 of fact I know about this - if he feels it should be  
2 planted, he may be right. But please do not generalize  
3 in the terms where I cannot answer your question  
4 properly.

5 Q. Right. And all I'm trying to do, Mr.  
6 Marek, is to say that -- all right, I think I have your  
7 answer.

8 A. Well --

9 MS. SWENARCHUK: Do you want your  
10 attention brought to the section which in the position  
11 of FFT answers your question, Mr. Freidin?

12 MR. FREIDIN: Well, first of all I would  
13 like to know whether Mr. Marek can do it. I mean, does  
14 Mr. Marek -- Mr. Marek had a hand to play in this and I  
15 want to know - and the witness has endorsed these - I  
16 want to know, and if the witness can't do it I may ask  
17 you.

18 MS. SWENARCHUK: I'm satisfied with his  
19 response, Mr. Freidin. If I can be of any further  
20 assistance, I'm prepared to do that.

21 MR. FREIDIN: Q. Mr. Marek, I take it  
22 you can't take me to a certain section of Exhibit 1416  
23 which are the silvicultural prescriptions by Forests  
24 for Tomorrow and tell me where it provides an  
25 opportunity to plant?

1 A. It's not mention of it there.

2 MADAM CHAIR: Isn't Mr. Marek's point  
3 that it's not prohibited.

4 MR. FREIDIN: It's not...?

5 MADAM CHAIR: If these terms and  
6 conditions were in some way implemented, planting is  
7 not prohibited. It's not specifically stated as part  
8 of a prescription.

9 MR. FREIDIN: All right.

10 Q. Well then, if I could just clarify  
11 something, sir.

12 A. Yes.

13 Q. I think we will get to this when I  
14 get to the actual terms and conditions and we may come  
15 over this again.

16 By the way, are you able to confirm for  
17 me, sir, whether or not what they are actually doing on  
18 some sites in the Clay Belt through the use of CLAAG,  
19 this careful logging around advanced growth--

20 A. Yes, yes.

21 Q. --and planting where you don't get  
22 sufficient regeneration--

23 A. Yes.

24 Q. --is doing exactly what this  
25 particular author has suggested?

1           A. Counsel, I dealt with this in my  
2 presentation in my slides where I said that some of  
3 these areas are planted, some are not planted, there is  
4 many obstacles, debris on the site where planting would  
5 be extremely difficult. I have answered it.

6           MADAM CHAIR: Are you satisfied with  
7 that, Mr. Freidin?

8           MR. FREIDIN: I'm content to move on.

9           Q. Mr. Marek, could you put in front of  
10 you the silvicultural prescriptions which have been  
11 filed by Forests for Tomorrow, please.

12          A. Yes, I got.

13          Q. And in the second line you refer to  
14 ecological sustainability. Can you explain to me --

15          MR. MARTEL: What page?

16          THE WITNESS: What page? First page?

17          MR. FREIDIN: Q. The very, very first  
18 page. I'm going to go through this.

19          A. Yeah.

20          Q. Can you define for me what you mean  
21 by ecological sustainability?

22          A. What line are we talking about.

23          Q. Second line, sorry:

24          "The development and implementation of  
25 silvicultural prescriptions shall provide

1 for the ecological sustainability of the  
2 forest."

3 A. Yeah.

4 Q. What is ecological sustainability?

5 A. Ecological sustainability is perhaps  
6 identical with biological species representation or  
7 biological place -- or proper placement of biological  
8 products in an ecosystem. That's what it means.

9 Q. And by proper placement, you  
10 described earlier in your evidence about having to put  
11 back --

12 A. Black spruce.

13 Q. Let me finish, please.

14 A. Yes.

15 Q. About putting back on a site the  
16 species which would be there by nature through natural  
17 disturbance?

18 A. Yes, yes.

19 Q. And that is what you mean by  
20 ecological sustainability?

21 A. Yes.

22 Q. Putting back on the site those  
23 species which would have been there had nature and  
24 natural disturbance come through and the stand  
25 regenerated naturally?

1 A.. Yes.

2 Q.. Thank you. Going down to the portion  
3 just above sub (a) it says:

4 "Without limiting the generality of the  
5 foregoing..."

6 A. Where are we now, sir?

7 Q. Let's go down about -- see where it's  
8 got one --

9 A. You're talking about the draft of  
10 term and conditions.

11 Q. Yes, I'm going to stick with this  
12 document now. See where it says 1, 2, 3 and 4?

13 A. Inappropriate and improper planning.

14 Q. Now go down. After No. 4 it says:  
15 "Without limiting the generality of the  
16 foregoing..."

17 A. Yes, yes.

18 Q. It says:

19 "Silvicultural prescriptions shall result  
20 in the lowest cost to the public to  
21 regenerate stands equal to the species  
22 and density of the stands that are  
23 harvested."

24 A. That's correct.

25 Q. Now firstly, I understood your

1 evidence -- well, does that mean that if you go to a  
2 stand -- first of all, by density do you mean stocking  
3 or do you mean something different?

4 A. I am not talking about stocking as in  
5 terms of that stocking is necessarily the benchmark of  
6 stands which have an early closing, crown closure in  
7 order to regenerate capacity of the forest floor in  
8 those terms; it's an ecological term, it's a dynamic  
9 term which deals with this final product being similar  
10 to the one created by nature.

11 Q. All right. So when it says equal to  
12 the species and density of the stands that are  
13 harvested, you're trying to get back a rotation from  
14 now a stand of similar density?

15 A. In other words, to achieve crown  
16 closure, very important.

17 Q. Yes, but you're equating the density  
18 here -- see, you talked about density of seedlings  
19 right after harvest. Remember you talked about 200,000  
20 little fellows?

21 A. That's right.

22 Q. Now, that's one sort of density.

23 A. That's right.

24 Q. When you go into the stand and you  
25 harvest it, you obviously don't have 200,000 little

1 fellows, you have density of tree caused by --

2 A. 500 per hectare, 5-, 700 per hectare.

3 Q. Okay. So when you say that the  
4 silvicultural prescription should result in a stand  
5 with equal density, by density you're talking about  
6 then density of the stand that you harvested?

7 A. Density of stand you harvested.

8 Q. You're saying density of the stand  
9 that you harvested?

10 A. Not at all, that has nothing to do  
11 with the stand you harvested, sir, it has nothing to do  
12 with it.

13 Q. Well, let's look at the words. It  
14 says that:

15 "The prescription shall result in stands  
16 equal to the species and density of the  
17 stands that are harvested."

18 So it does have to do with harvested, at  
19 least the way it reads. It does say equal to the  
20 stands that are harvested; does it not? It does,  
21 doesn't it? Let's look at the words.

22 A. What paragraph is it?

23 Q. (a).

24 A. "Maintain and enhance habitat for..."

25 Q. No, no, no, (a):

1 "The prescription shall...", (a), pardon  
2 me.

3 A. "result in lowest cost to the public  
4 to regenerate stands equal to the species  
5 and density of the stands that were  
6 harvested." Okay.

7 Q. Now, as I read that, that means if  
8 you go into a stand--

9 A. That's right.

10 Q. --and you harvested it--

11 A. Yes.

12 Q. --if it has -- let's say it's pure  
13 black spruce.

14 A. That's right.

15 Q. Black spruce stand, let's say there's  
16 nothing but black spruce, it has a certain density.

17 A. That's right.

18 Q. And you're saying that the  
19 prescription should be such that you end up a rotation  
20 from now--

21 A. That's right.

22 Q. --with a stand of black spruce, black  
23 spruce 10.

24 A. Correct.

25 Q. Of the same density?

1                   A. That's right. In other words, equal  
2 to the old stand.

3                   Q. Equal to the old stand.

4                   A. Right.

5                   Q. Okay. And when you're talking about  
6 density you've told me you're not talking about  
7 stocking, you're talking about desnity.

8                   A. I'm talking about density. This  
9 paragraph specifically applies towards the stands which  
10 I wish to have to simulate or duplicate what we had  
11 there before.

12                  Q. Okay.

13                  A. Okay.

14                  Q. Now, it says also that it should be  
15 stands equal to the species and desnity. Now, when we  
16 have got black spruce 10 --

17                  A. That is correct.

18                  Q. When you've got black spruce 10, that  
19 means you want to get black spruce 10 back and you want  
20 it at the same density that you harvested?

21                  A. That's right.

22                  Q. As I read this term and condition it  
23 also means that if you go into a stand and it's black  
24 spruce 7, poplar 3 --

25                  A. Correct.

1 Q. You have to regenerate -- it's says,  
2 you shall have a prescription which results in a  
3 stand--

4 A. Yeah.

5 Q. --a rotation from now which is black  
6 spruce 7, poplar 3?

7 A. Correct.

8 Q. That also means that if you go into a  
9 stand which is a mixed wood; black spruce 4, poplar 2,  
10 balsam fir 1, white birch 1, you've got to regenerate  
11 it to that same species and density; that's what it  
12 says.

13 A. I think it's quite clear, sir, that  
14 through all the testimony I said we like to see stands  
15 similar to the previous one and that cover all spectrum  
16 and especially black spruce. Is that understand?

17 MADAM CHAIR: Yes. Mr. Freidin's point  
18 is very specific and, that is, if there was some  
19 requirement for a forester to follow to the letter what  
20 this condition is saying, would that forester be  
21 obligated to worry about replacing balsam and poplar  
22 and birch, or could he concentrate on the black spruce  
23 components of that stand?

24 THE WITNESS: Madam, I said in specific  
25 area where you have a multi-purpose forest that indeed

1 that is it, that is a goal of management. If I deal  
2 with intensive management of product, again it's  
3 clarified yeah. So I like to know what we talking  
4 about here in the first place, because let me point out  
5 for your benefit, Madam, that I have tried to duplicate  
6 in my work exactly the natural, I have planted 10-,  
7 15,000 trees per acre in order to see the damage,  
8 duplicate the nature.

9 We were talking about density up to  
10 250,000 at initial stage after fire. So I cannot  
11 duplicate that, but we can get close by to it, and what  
12 I mean for is a product of 8- or 900 tree at age of  
13 hundred, 120. That's what I'm aiming for here in my  
14 prescription.

15 MADAM CHAIR: Mm-hmm, for the species  
16 that you have a goal for?

17 THE WITNESS: Indigenous species.

18 MR. FREIDIN: Q. Well, you said  
19 indigenous species. Madam Koven said the species that  
20 you managed for, and you said indigenous species.

21 If you go to a stand that's there, put  
22 there by nature and if black spruce 5, poplar 2 and  
23 balsam fir 3, that's the stand which is indigenous?

24 A. That's correct.

25 Q. And you have just told Madam Chair

1       that this term and condition would require you then to  
2       try and reproduce an identical stand as close as you  
3       could?

4                   A. As could, that's right.

5                   Q. A rotation from there?

6                   A. Yes. But that has nothing to do with  
7       initial stocking. You see we started with stocking and  
8       we jumping to density.

9                   Q. No, no. Oh, all right. Sorry, go  
10       ahead.

11                   A. I was to read the transcript, sir,  
12       but I am quite sure that we start more or less debating  
13       the relationship between stocking and density, natural  
14       stands, and so on, and let me point out that, No. 1,  
15       can be manipulated, the density are quite frequently  
16       manipulated by nature, by losses to windthrow or  
17       insect, diseases and so on; in other words, the stand  
18       clean itself.

19                   In Artificially regenerated stand, I can  
20       manipulate it to by thinning, cleaning, spacing and I  
21       don't know what else. But the point is, in these  
22       prescription, I want to be quite sure that everybody  
23       understand, that what we are aiming is certain quality  
24       - of stands which are similar to the one before.

25                   MADAM CHAIR: And it makes perfect sense

1 when you're talking about a fairly pure black spruce  
2 stand, obviously you would want to replace it to look  
3 like that again?

4 THE WITNESS: Exactly.

5 MADAM CHAIR: But with a mixed wood  
6 stand --

7 THE WITNESS: I like to see in the  
8 multi-purpose forestry same thing. Now, if we cannot  
9 do it hundred per cent as you suggest, sir...

10 MR. FREIDIN: q. You would like to see  
11 the same thing.

12 A. In multi-purpose forestry.

13 MR. FREIDIN: I'm sorry, I don't want to  
14 interrupt you, Madam Chair.

15 MADAM CHAIR: Go ahead, Mr. Freidin.

16 MR. FREIDIN: Q. You said that you  
17 weren't talking about stocking in sub (a), you were  
18 talking about density; correct?

19 A. Yeah.

20 Q. When we look at this term and  
21 condition (a)--

22 A. Yes.

23 Q. --and you have indigenous stands  
24 which has a composition I indicated black spruce 5, I  
25 keep changing it.

1 A. Whatever.

2 Q. Black spruce 5, poplar 2, balsam fir  
3 3, are you saying that you would be in compliance with  
4 this term and condition if you regenerated that stand  
5 to those species, but it makes no difference what the  
6 composition of the stand is at rotation?

7 A. Well, sir, we are talking about  
8 association, certain association of forest species.  
9 Now, I am sorry to -- this is -- if you have an  
10 original stand of composition as you written up on your  
11 pad there and my objective is to duplicate the stand,  
12 then indeed I am bound to take certain procedure and  
13 prescription to achieve it, so I working towards that  
14 goal.

15 Q. Yes, but you said if your objective  
16 is to reproduce that, and what I'm suggesting to you is  
17 that this term and condition is telling you what your  
18 objective has to be, that you have no choice about what  
19 your objective is going to be. It says, it shall be  
20 what it states, you shall return the species and the  
21 density.

22 A. That's why the prescription is as  
23 such, it's a prescription.

24 Q. All right. So let me give you a  
25 hypothetical, sir.

1 A. Okay.

2 Q. If you have a stand which is made up  
3 of black spruce and jack pine--

4 A. Correct.

5 Q. --and it's got more jack pine than  
6 black spruce in it--

7 A. Correct.

8 Q. --and that is what you encounter in  
9 nature, all right, can you as a forester with this term  
10 and condition decide that you can get back quite a bit  
11 more black spruce in the next stand and actually go  
12 ahead and implement a prescription to obtain that?

13 A. Yes.

14 Q. Would that be returning the stand to  
15 the species and density of the stand that was harvested  
16 as those words mean, as those words are interpreted by  
17 most people?

18 A. Yes, yes. Well, please, if some  
19 people has a different prescription, different idea of  
20 stand composition association and they are going to  
21 prescribe different treatment, by gosh, that's a goals  
22 and objective. But if you are telling me that the  
23 goals are reproduce exactly what was there before, yes,  
24 you can manipulate stand to such a degree, as has been  
25 done throughout the world by five different, six

1 different species.

2 Q. All right. So we can change --  
3 increase black spruce, decrease jack pine and that  
4 would be okay?

5 A. By manipulating the density, by  
6 manipulating the crown closure, by manipulating species  
7 according to their ability and capability. It's been  
8 done throughout the world.

9 Q. All right. So you would end up with  
10 a stand as dense as you had before?

11 A. Oh, it's going to be different  
12 densities if you talk about -- sir, if you talk about  
13 species association, you are immediately talking --  
14 well, okay, keep going...

15 Q. That's the problem, that's the  
16 problem I'm having.

17 A. What's the problem?

18 Q. If you read that term and condition  
19 it says that you can't do that, you have to have stands  
20 equal to the species?

21 A. Exactly.

22 Q. Now, it would be equal to the species  
23 because you'd have jack pine and black spruce in my  
24 hypothetical; right?

25 A. Oh.

1 Q. You would have the same species?

2 A. Because in --

3 Q. It would be in different composition  
4 in terms of percentage of the stand, am I right so far?  
5 Let's see if we can take this one at a time, it's very  
6 complicated.

7 A. Okay.

8 Q. My hypothetical would have different  
9 species composition than the original stand?

10 A. If your goal and objectives are --

11 Q. If you went in there and you  
12 increased the black spruce --

13 A. Favoured one for the other.

14 Q. Decreased, therefore, end up with  
15 less percentage or less composition of jack pine.

16 A. If that's your decision and your  
17 prescription --

18 Q. And if that's your prescription and  
19 you achieved it, you will have changed the composition?

20 A. Association, species, yes.

21 Q. You would have the same species?

22 A. Very similar.

23 Q. Would you have the same density?

24 A. No, you wouldn't have the same  
25 density.

1 Q. Would the density be higher, lower?

2 A. Depends. When you talk about

3 association jack pine and black spruce, you are going

4 to have probably different density because jack pine

5 will grow faster, black spruce grow at the bottom.

6 Q. All right. Now, if you're telling me

7 then that you can change the composition--

8 A. Yes.

9 Q. --to more black spruce--

10 A. Yes.

11 Q. --less jack pine.

12 A. Yes.

13 Q. You've told me that the species

14 composition at rotation will be different.

15 A. Yeah.

16 Q. You've told me that the density of

17 that stand--

18 A. Would be different.

19 Q. --could very well be different?

20 A. That's correct.

21 Q. So, therefore -- and you said you

22 should be able to go ahead and do that.

23 A. If your goal is --

24 Q. Is that not -- all right, all right.

25 And if that was your goal, if that was your goal--

1 A. Yeah.

2 Q. --you would not -- you would be  
3 contravening --

4 A. Contrary to the prescription.

5 Q. You would be contravening that  
6 prescription?

7 A. Of course.

8 Q. That rule?

9 A. Of course you would.

10 Q. All right. Now, are you telling me  
11 that it should never be an objective that foresters  
12 should be precluded in this province from taking a  
13 stand of black spruce and jack pine and increase the  
14 amount of black spruce and reduce the amount of jack  
15 pine if they feel that's a good thing to do and they  
16 can get that result?

17 A. Mr. -- you are talking about goal  
18 objective of this government - just a second, let me  
19 finish - what kind of alternatives we are talking  
20 about, and perhaps it's good that we have a chance to  
21 discuss it.

22 If the government of this province going  
23 to prescribe or tell us that we have to turn all black  
24 spruce into jack pine or poplar, so be it. Here are  
25 the prescription of the Society which feel that is a

1 sound prescription.

2 Q. The Society, the Forests for Tomorrow  
3 say that's a sound prescription, that's what you're  
4 telling me.

5 A. Yes.

6 Q. I'm asking you, sir, as a forester--

7 A. Ohhh.

8 Q. --are you telling me, all right,  
9 first of all, the Society are saying that you couldn't  
10 do what I suggested, take a stand and increase the  
11 amount of black spruce--

12 A. Yeah.

13 Q. --and reduce jack pine; Forests for  
14 Tomorrow are saying you can't do that; is that right?

15 A. The way I should interpret that?

16 Q. Yes.

17 A. No, not you cannot, that you shall  
18 not do it.

19 Q. You shall not do it.

20 A. That's better.

21 Q. And do you agree and endorse that the  
22 forester should never be allowed to do that?

23 A. If he --

24 Q. Let's forget what Forests for  
25 Tomorrow said there. Do you agree -- is it your view,

1 as a professional forester, that there are no  
2 circumstances in which it would be appropriate for a  
3 forester to try or set as an objective to increase  
4 black spruce and reduce jack pine on a stand; is that  
5 your opinion as a professional forester?

6 A. This --

7 Q. Your opinion.

8 A. I'm representing Forests for  
9 Tomorrow, sir, certain professional prescriptions and I  
10 agree with them. That is why they are on the ground,  
11 that's why they are here and that should answer your  
12 question, sir.

13 MR. FREIDIN: Well, I'll probably  
14 continue this discussion and talk about it a little bit  
15 more --

16 MADAM CHAIR: Let's do it after lunch,  
17 Mr. Freidin.

18 MR. FREIDIN: Let's do it after lunch.

19 MADAM CHAIR: Okay. We will take the  
20 lunch break now, and the Board will be back at 1:40.

21 MS. CRONK: Sorry, Madam Chair?

22 MR. FREIDIN: 1:40.

23 MS. CRONK: Thank you very much.

24 ---Luncheon recess taken at 12:10 p.m.

25 ---On resuming at 2:50 p.m.

1 MADAM CHAIR: Please be seated.

2 MR. FREIDIN: Q. Mr. Marek, my notes  
3 indicate and hopefully we'll get off of this first  
4 paragraph in my moment. My understanding is that the  
5 interpretation that we should put on term and condition  
6 1.1(a) of Forests for Tomorrow, Exhibit 1416A, is that  
7 it would not allow or, in other words, you would not  
8 permit a forester to increase the black spruce density  
9 in the next stand and reduce the jack pine component in  
10 the next stand based on density measured at rotation?

11 A. No.

12 Q. I take it then that that term and  
13 condition should be interpreted in a way which would  
14 allow a forester who came upon a jack pine/black spruce  
15 stand to develop a prescription which would have as its  
16 objective and which would achieve an increase in the  
17 black spruce density in the next stand based on density  
18 measured at rotation?

19 A. Not in multi-purpose forestry.

20 Q. All right. In the area that you  
21 would identify as intensive management, the areas that  
22 you would set aside for single purpose, would the  
23 forester be allowed to do that; increase the black  
24 spruce content at the expense, if I can use that term,  
25 of jack pine?

1 A. Yes.

2 Q. In the areas which are not set aside  
3 for single purpose then I take it that the intent here  
4 is that if the forester could not increase the black  
5 spruce content, what he would have to do is attempt to  
6 return that stand to the equal amount of black spruce  
7 and jack pine at a similar density at the next  
8 rotation?

9 A. Very similar, right.

10 Q. All right.

11 A. Again, if you talk about jack pine  
12 management, my presentation is black spruce management,  
13 please.

14 Q. Okay. Let's talk about a mixed wood  
15 stand that I described to you, again thinking about  
16 this term and condition 1.1(a), and just so I want to  
17 make sure I understand you, the stand that I was  
18 describing was black spruce 5, poplar 2, balsam fir 3.  
19 Now, would that be a mixed wood stand by your  
20 definition?

21 A. Probably.

22 Q. Okay. Now, let's assume that at  
23 harvest you had a density of a thousand trees, okay?

24 A. Of what?

25 Q. All right. Let's say we had a

1 thousand trees.

2 A. Of what species?

3 Q. Black spruce 5, poplar 2, balsam fir  
4 3?

5 A. Okay.

6 Q. Do I interpret 1.1(a) correctly to  
7 say that if you were in an area of extensive  
8 management, you were practising extensive silviculture,  
9 that this term and condition is designed to require the  
10 next stand at rotation on that land base to have a  
11 thousand trees in terms of its density, and that there  
12 should be 500 black spruce, 200 poplar and 300 balsam  
13 fir?

14 A. Plus/minus.

15 Q. When you say plus or minus you're  
16 saying -- what does that mean?

17 A. Yeah, that -- if you apply rigid  
18 standards and duplication of stands which were there  
19 before it's unrealistic because there will be always  
20 the changes, there will be prevalent black spruce 6 or  
21 black spruce 4 and otherwise, so don't play with  
22 figures, sir.

23 Q. I understand.

24 A. Okay. So when you talk about similar  
25 stand and that has been expressed many times before

1 you, Madam Chair and Mr. Martel, that we are striving  
2 for similar condition, similar association in  
3 reasonable relationship.

4 MADAM CHAIR: So, Mr. Marek, to your  
5 satisfaction then, if this were to be achieved to have  
6 a similar stand be regenerated, then would the test for  
7 that be the visual inspection by an experienced  
8 forester who would say: Yes, this stand is very  
9 similar to the one that was there before, and that  
10 would be satisfactory rather than counting every tree  
11 and every --

12 THE WITNESS: And manipulation of these  
13 stands in such a way that you achieve fairly equal  
14 relationship or possible.

15 MADAM CHAIR: But this would be something  
16 that could be readily seen by a forester, it wouldn't  
17 require a lot of tree counting?

18 THE WITNESS: This -- you are talking  
19 about practical application where the forester is going  
20 to try to achieve very similar goals.

21 This applies to many things, the  
22 experience, the manipulation place at the beginning,  
23 the manipulation at the periods of the dynamics and  
24 development of these stands and normal kind of  
25 procedure we should be doing in order to practice

1 forestry as I understand it.

2 MR. FREIDIN: Q. And, Mr. Marek, in  
3 terms of knowing whether you had a stand of similar  
4 species and density at the next rotation, it's fair to  
5 say that the only time that you could really make that  
6 assessment would be at the next rotation?

7 A. Of course, the final result will be  
8 next rotation obviously.

9 Q. Okay. And based on your answer, sir,  
10 when I look at the prescription -- the standard as  
11 worded, it says its silvicultural prescription shall  
12 result in this, I take it that you would have no  
13 objection if that was changed to say that the forester  
14 in developing a silvicultural prescription shall  
15 endeavor to achieve at the lowest cost. Like, he shall  
16 do his best to try to achieve it, but it's not  
17 something that he must in fact do to the letter of this  
18 specification. Do you understand the difference?

19 A. He must -- between must; in other  
20 words, if he doesn't achieve he will be penalized or  
21 accused of poor management, not at all in that sense.

22 Q. That wasn't your intent Then?

23 A. The intent is to achieve similar  
24 condition at the reasonable levels, yes.

25 Q. All right. But as I understand you,

1 because it's plus or minus, would you agree that your  
2 intent would be expressed here if the words said that  
3 the forester shall, in developing the prescription,  
4 endeavor to the best of his professional ability to  
5 achieve at the lowest cost to the public to regenerate  
6 stands equal to the species and density of the stands  
7 that are harvested?

8 A. That's correct.

9 Q. Okay. Thank you. And when  
10 foresters -- forestry is a profession, and would you  
11 agree with me that two foresters who were looking at a  
12 requirement that said, you must endeavour to achieve  
13 stands of equal species and density, that those two  
14 foresters could in a very professional way disagree on  
15 the methods to be employed to achieve that result?

16 A. That's what we witness, yes. That's  
17 what we witness now.

18 Q. Yes.

19 A. Two foresters, 10 foresters have 10  
20 different answers, yes, I agree fully.

21 Q. And are you suggesting that there are  
22 no situations in which two foresters could have a  
23 reasonable -- on reasonable grounds -- let me put it  
24 this way. I suggest to you that foresters, two  
25 foresters could on very reasonable grounds disagree on

1 what the best method would be to achieve the same  
2 result?

3 A. Depend on the goals and objectives.

4 Q. If the goal and objective was to do  
5 your best to achieve at the lowest cost to the public  
6 the regeneration of stands equal to the species and  
7 density of the stands that are harvested, I'm  
8 suggesting to you that two foresters could disagree on  
9 the method which should be employed to achieve the same  
10 objective?

11 A. They could disagree, I agree, but...

12 Q. And is there something wrong with two  
13 professionals disagreeing on how to apply a profession  
14 which you yourself have described as involving art and  
15 intuition?

16 A. Sir, that has nothing to do with art,  
17 intuition that is all based on goals and objectives.  
18 If some drastic disagreement exists between foresters,  
19 and let's be realistic what happened nowadays, sir,  
20 it's always the goals and objectives which we disagree.  
21 One has an economical objective, the other one have  
22 another objective, whatever it may be, that's why we  
23 disagree, and that shouldn't happen in sound forestry.

24 Q. No, but let's say -- what I'm putting  
25 to you is a situation where there is no disagreement on

1 the objective, if two foresters looked at 1.1(a), do  
2 you have that in front of you?

3 A. That's right, I know.

4 Q. And they both said we want to achieve  
5 that on this land base, would they have the same  
6 objective?

7 A. Well, they may have the same  
8 objective but the basic disagreement is based on the  
9 different goals and objectives.

10 Q. Well, I'm having a problem with  
11 terminology. If they're both trying to achieve exactly  
12 the same thing --

13 A. But they don't achieve -- sir, this  
14 is one of the problem.

15 Q. No, no, no. I'm talking  
16 hypothetically then, let's talk hypothetically. If you  
17 have two foresters--

18 A. Yeah.

19 Q. --who sit down and they look at  
20 1.1(a) and they say that is what we want to achieve on  
21 that stand, that's what we should try to get back there  
22 at the next rotation.

23 A. That's right.

24 Q. So in that situation they would have  
25 the same goal for that land base; is that right?

1 A. Keep going.

2 Q. If I said they had the same goal --

3 A. But one is right and one is wrong.

4 Q. No, no, no, they want the same  
5 result.

6 A. But you cannot achieve same results,  
7 sir, if you have a different goals and objectives. The  
8 goals objectives are this, sir, that you are not  
9 looking final production, you are talking the total  
10 spectrum of forestry practices.

11 In other words, if I going -- sir, I have  
12 done it. Madam Chair, I have planted trees with  
13 certain objective, I have done natural regeneration  
14 with certain objective, and by the objective was the  
15 same I failed because the results were different and  
16 they were immediately visible after I started through  
17 the process.

18 And, sir, when we talk about objective  
19 and we talk about goals, indeed the economic objective  
20 here are very important.

21 Q. I understand that.

22 A. Okay.

23 Q. But I'm saying, and please bear with  
24 me, Mr. Marek, because I'm just trying to understand --

25 A. I bear with you, sir.

1 Q. I'm just trying to understand these.  
2 The way I understand these words in the English  
3 language--

4 A. Right.

5 Q. --if two people sat down, if you and  
6 I sat down and I said to you: Mr. Marek, I think that  
7 on that stand we should try to achieve a stand equal to  
8 the species and density of the stands that we are going  
9 to harvest, I said that to you.

10 A. Okay.

11 Q. You sit down and you say to me: Mr.  
12 Freidin, I think on that stand that we should try to  
13 regenerate the stands equal to the species and the  
14 densities of the stands that are harvested.

15 A. Right.

16 Q. We would be agreeing on what we  
17 should be trying to achieve--

18 A. Right.

19 Q. --with that stand?

20 A. That's right.

21 Q. With that area?

22 A. Okay. How you going to go about it?

23 Q. Let's leave aside for the moment how  
24 we are going to go about it.

25 A. Oh.

1 Q. Would you agree with me -- we'll get  
2 to that.

3 A. Okay.

4 Q. Would you agree with me that in the  
5 situation I have described to you, you and I would have  
6 the same objective--

7 A. Oh.

8 Q. --in terms of the result that we  
9 wanted to achieve on that land base?

10 A. Right. I understood perfectly in  
11 that case.

12 Q. And two foresters, if I was a  
13 forester that example would be two foresters then  
14 saying: We want to achieve the same result or the same  
15 objective on that land base; right?

16 A. Yields, okay.

17 Q. Okay. Now, let's get to the question  
18 about how we are going to go about trying to achieve  
19 that.

20 A. Right. How are we trying to achieve  
21 it. Okay. How are you going to try and how am I going  
22 to do it; right?

23 Q. All right. Now, when We talk about  
24 how, I take it we are talking about what are the  
25 silvicultural prescriptions that we are going to in

1 fact--

2 A. Implement.

3 Q. --implement on that land base?

4 A. Right.

5 Q. And what I'm saying to you, you are a  
6 forester--

7 A. Yes.

8 Q. Let's pretend if it's not me, let's  
9 say it's another professional forester sitting here.

10 A. Yeah.

11 Q. That you and that other professional  
12 forester might disagree on the silvicultural  
13 prescription--

14 A. Right.

15 Q. --which should be used to achieve the  
16 common goal or objective?

17 A. Right, right.

18 Q. And I'm suggesting to you that  
19 because, as you have stated in your evidence, the  
20 practice of forestry, which includes the development of  
21 silvicultural prescription, involves an element of art  
22 and intuition, that it would be reasonable in some  
23 situations for you and that other professional forester  
24 to disagree on the best silvicultural prescription to  
25 achieve your common objective?

1 A. Okay.

2 Q. Okay. Do you agree with that?

3 A. Yes. Well, sure, it's happening all  
4 the time.

5 Q. Now, when that happens, is it the  
6 intent of this term and condition or these terms and  
7 conditions that the -- all right, let's say that the  
8 other professional -- you're the professional forester  
9 that's managing the land base, it's your management  
10 unit, okay?

11 A. Correct. I hope.

12 Q. The other professional forester, it's  
13 not his or her management unit.

14 A. Right.

15 Q. And you decide that in the best  
16 interests of the forest and for the purposes of trying  
17 to achieve this objective which this other forester  
18 has, you feel that the best silvicultural prescription  
19 is to do it this way, and he says: No, no, I think the  
20 best way to endeavor to get that result is that way.  
21 All right.

22 A. Yes, I don't...

23 Q. In that situation who decides whether  
24 the prescription is the proper one; is that your  
25 decision as the manager of that management unit, is it

1 this forester over here who's got a different view, or  
2 is it the view of another professional forester?

3 A. No, in this case particular place  
4 because you mentioned the management forester.

5 Q. Yes?

6 A. It's the role of timber management  
7 plan to ascertain the certain prescription and he will  
8 be responsible for it. The other forester may have a  
9 different ideas, but he is responsible, speaking  
10 realistically on the whole system. That has been  
11 answered, Madam, several times during the hearings.

12 Q. Okay.

13 A. I hope.

14 MADAM CHAIR: Yes.

15 MR. FREIDIN: Q. Thank you. I think  
16 that helps me somewhat.

17 Could you turn to -- All right. So  
18 dealing with extensive silviculture where you ran into  
19 the mixed wood stand which was the black spruce 5, the  
20 poplar 2, and the balsam fir 3, you have to try or  
21 endeavour to develop a prescription which would have a  
22 similar stand at the next rotation?

23 A. That's correct.

24 Q. Could you turn to term and condition  
25 2.1(b) which is on page 2?

1 A. Of what?

2 Q. I'm sorry, these are the same terms  
3 and conditions.

4 A. Of FFT?

5 Q. Yes.

6 A. Okay. Page 2.

7 Q. Yes, right at the very bottom, it  
8 says: Mixed wood management including white spruce.

9 A. Correct, that's right.

10 Q. Now, just dealing with mixed wood  
11 management, you said that the stand that I described to  
12 you would probably qualify as a mixed wood stand?

13 A. Well, that's what we agreed on, yes,  
14 yes.

15 Q. Do you have a way of describing in a  
16 very generic way what would qualify as a mixed wood  
17 stand?

18 A. Oh, combination of species,  
19 association of different rotations, different -- oh,  
20 gosh, there's a gamut of things.

21 Q. You define it by species primarily,  
22 it means different species?

23 A. Well again, depend on the kind of  
24 stands you have. I mean, your point is poplar 5,  
25 something else there, something else over here, but

1        anyway we define that stand, do we?

2                    Q.    Okay, let's forget the general  
3        definition.  As I read this term or condition it says,  
4        if you go over to page 3--

5                    A.    Yes.

6                    Q.    "Where possible, natural regeneration  
7        of white spruce should be carried out--"

8                    A.    Yes.

9                    Q.    "--through the seed tree method."

10                   A.    Mm-hmm.

11                   Q.    And then it says:

12                   "Balsam fir growth shall be harvested and  
13        advance growth eliminated by specific  
14        site preparation."

15                   A.    That's correct.

16                   Q.    Can I assume that the intent of  
17        prescribing that balsam fir growth shall be harvested  
18        and advance growth eliminated by specific site  
19        preparation--

20                   A.    Correct.

21                   Q.    --is to eliminate, reduce the  
22        likelihood of balsam fir forming any part of the next  
23        stand?

24                   A.    You got it.  That last sentence what  
25        you said, not to eliminate completely but have it in a

1 kind of scope, size and representation which will still  
2 represent balsam regardless.

3 By scraping off or by eliminating at the  
4 first period of degradation or aggravation of the stand  
5 is practically impossible because balsam is always  
6 going to move, but have to eliminate the numbers which  
7 we usually get, which is too many balsam, so have to  
8 be -- that's what I mean.

9 Q. Is the purpose -- in the stand that I  
10 was describing to you where you had balsam fir 3, 30  
11 per cent of the stand was balsam fir, would the purpose  
12 of this sentence to remove the advance growth and to  
13 harvest all the balsam fir, be designed to have a  
14 balsam fir component at the next rotation less than 30  
15 per cent?

16 A. If possible, yes.

17 Q. How low -- and would you say that the  
18 lower the percentage of balsam fir in the next rotation  
19 the better?

20 A. Due to the balsam -- the spruce  
21 budworm infestation, which is a pathological  
22 occurrence, we like to minimize the presence of balsam  
23 fir.

24 Q. So if through this prescription you  
25 could actually eliminate balsam fir in the next

1 rotation, you feel that would be a better result than  
2 just reducing it say from 30 per cent to 20 per cent?

3 A. Yes, or even less.

4 Q. All right. On that basis then, sir,  
5 I see that there is a contradiction between term or  
6 condition 1.1(a) which you agreed with me you would  
7 have to try and return the stand at next rotation to  
8 have the same composition plus or minus of what you had  
9 at harvest, and this one which now says: Oh no, we  
10 don't want any balsam fir, and I just don't -- to me it  
11 appears as a conflict and I'm wondering whether you can  
12 help me --

13 A. That's your statement, Mr. Freidin,  
14 that's statement. What I am trying to indicate here  
15 that you have a pathological rotation, you have all  
16 kind of condition of our forest at this time which  
17 requires extra measure, extra necessity is to reduce  
18 balsam balsam fir presentation or the association  
19 instead in order to relieve the pressure by the spruce  
20 budworm which is very great; in other words, we are  
21 talking about extenuating conditions where the forester  
22 must protect the rest of the forest.

23 So you have only one choice and, that is,  
24 protect the species which are not in danger and try to  
25 eliminate species which are in danger of these

1       circumstances.

2                   Q.   So...

3                   A.   There's nothing, nothing.

4                   Q.   You don't believe there's a  
5       contradiction?

6                   A.   Of course not.   Sir, in forestry...

7                   Q.   No, no, but between 1.1(a) and --

8                   A.   Oh no, not at all.

9                   Q.   Okay.

10                  A.   Not not all, not at all.   That has  
11       been considered, sir, and discussed on many, many, many  
12       meetings what we going to do with balsam fir and what  
13       should be done and what could be done, and one of the  
14       prescription which I think is -- if you have a problem  
15       with risk in the forest, you have to take certain steps  
16       in order to eliminate that risk, that's (a) and (z) of  
17       proper management, and if you consider there is a  
18       contradiction between FFT, be assured that I have  
19       thought of it in these terms.

20                  Q.   Right.   Do I take it then that your  
21       bottom line in terms of balsam fir is that if term and  
22       condition 1.1(a) remains in its present wording with  
23       the small change you agreed to about saying endeavour  
24       to achieve, let's say it stays the same, that it should  
25       not be interpreted as preventing silvicultural

1 prescriptions which were designed to eliminate balsam  
2 fir from a mixed wood stand?

3 A. I would not use that terminology at  
4 all.

5 Q. Which terminology do you have  
6 problems with?

7 A. Because you've got to be qualified,  
8 it's got to be qualified, that statement you have made,  
9 sir, have to be qualified in such a way in extra  
10 condition or extra circumstances, and that has been --  
11 I think there is a statement to that matter at the  
12 bottom someplace there, that indeed when you have a  
13 condition as you mentioned here, the balsam fir is in  
14 the pathological rotation and can be classified as in  
15 danger by pest and diseases, that forester  
16 automatically have to take action, course of action.

17 Q. Right. And I take it then when  
18 you're saying that, you're referring to page 4?

19 A. Yeah, there.

20 Q. Page 4 of the silvicultural  
21 prescriptions.

22 A. Right.

23 Q. Down at the bottom, silvicultural  
24 exceptions?

25 A. Exactly.

1 Q. Where you say in .3:  
2 "An exception to the silvicultural  
3 standards set out in 2.1 may be approved  
4 if an area has been significantly  
5 affected by natural calamity."

6 A. Yes, sir.

7 Q. What if the balsam fir in the stand  
8 has not been significantly affected by natural calamity  
9 but is healthy?

10 A. Then if you have a condition where  
11 hopefully balsam fir will be in better condition if the  
12 spruce budworm will be corrected somehow, and I don't  
13 think it will but, however, in case we are talking  
14 about hypothetical question here, then of course balsam  
15 fir as it always was through the history of forests,  
16 boreal forest, become part of the association in mixed  
17 wood component.

18 Q. So if the area contains balsam and it  
19 has been affected by natural calamity, there's no  
20 question in your mind you should try to eliminate it if  
21 possible from the stand when you harvest it?

22 A. That's correct.

23 Q. If it's healthy and the balsam fir  
24 epidemic--

25 A. Subsides.

1 Q. --has subsided--

2 A. Has subsided.

3 Q. --is there an equal need or should  
4 there be a requirement that you eliminate the balsam  
5 fir from that stand?

6 A. No, no. Sir, I said on many  
7 occasions that I like to see perpetuation of condition  
8 which the nature gave us for many years and thousands  
9 of years and, unfortunately, through interference we  
10 have somehow bent these conditions, we have been  
11 improve it, so we have problems, and I think that has  
12 been testified to previously, Madam.

13 Q. Okay. In terms of returning mixed  
14 wood stands to their original species and densities--

15 A. Composition.

16 Q. --composition plus or minus, and that  
17 as you say is a requirement, could you please turn to  
18 the Forests for Tomorrow source book, your article:  
19 Evaluation of Three Silvicultural Treatments in the  
20 Northcentral Region, please?

21 A. Yes, I remember it, matter of fact I  
22 remember it by heart.

23 MADAM CHAIR: Is that source book 1 or 2,  
24 Mr. Freidin?

25 MR. FREIDIN: I believe it's probably 2.

1 THE WITNESS: Madam, I can -- here.

2 (handed)

3 MADAM CHAIR: Thank you, Mr. Marek.

4 THE WITNESS: Yes?

5 MR. FREIDIN: Q. I'm just going to wait  
6 for the Board to get their copy. Do you have that now?

7 A. It's under what Marek, Marek.

8 MADAM CHAIR: How do you spell that?

9 THE WITNESS: Right here.

10 MR. FREIDIN: It's like the tie shop  
11 across the street.

12 Q. Mr. Marek, could we turn to page 35  
13 of that document, please?

14 A. Yes.

15 Q. Well, first of all go to page 32.

16 A. 32?

17 Q. Yes.

18 A. Okay. Silvicultural treatment of  
19 upland mixed wood sites, correct.

20 Q. All right. So we're talking about  
21 silvicultural treatment of upland mixed wood sites?

22 A. Right.

23 Q. Would you turn then to page 35?

24 A. Correct.

25 Q. Starting at the bottom line on page

1 35, it states:

2 "Looking towards the future, field  
3 observations have shown that some ground  
4 rules will have to be established in  
5 order to exploit the potential of mixed  
6 wood sites and to start practising better  
7 management."

8 A. That's right.

9 Q. "Many of the areas can be converted  
10 to softwoods--"

11 A. Right.

12 Q. "--by applying appropriate  
13 silvicultural measures."

14 A. That's right.

15 Q. "Mixed wood cut-overs can be  
16 converted to softwoods by planting white  
17 spruce, black spruce, jack pine and  
18 larch."

19 A. Correct.

20 Q. "Recreating the mixed woods equal to  
21 the previous forest originated by nature  
22 is somewhat contradictory in light of  
23 looming shortages of softwoods in the  
24 areas close to the mills and...", and I

25 emphasize,

1 "...would be impossible to achieve."

2 A.. Right.

3 Q. Do you agree that today it is equally  
4 impossible to achieve?

5 A. Oh, I think -- please, don't miss the  
6 context of this statement.

7 Q. All right.

8 A. The context was strictly geared to  
9 the intensive managed area in the vicinity of mills  
10 where intensive forest management was being practised;  
11 in other words, maximization of timber production was  
12 the goal.

13 Q. All right. Now, that document goes  
14 to the part of the quotation which goes to exploiting  
15 the mixed woods for the purposes of converting them?

16 A. For timber production only.

17 Q. For timber production, and I  
18 understand that, Mr. Marek.

19 A. Correct.

20 Q. What I would like to focus on is your  
21 opinion in 1983 when you wrote this paper, that in  
22 terms of re-creating mixed wood stands equal to the  
23 previous forest originated by nature, would be  
24 impossible to achieve.

25 A. That's correct.

1 Q. I will tell you very frankly, I'm  
2 concerned about that, because if it was impossible to  
3 achieve then, and that's still your opinion today?

4 A. No, no. No, no, sir.

5 Q. I misinterpret the words?

6 A. Yes, you do.

7 Q. Okay, I'm sorry.

8 A. The meaning of it, because here I was  
9 talking about difficulties under the present logging  
10 condition. Sir, we cannot duplicate these things which  
11 I'm talking about here, duplication of multi-purpose --  
12 if we are dealing silviculture and harvesting practices  
13 of the present and the past, this is impossible.

14 Q. Are there silvicultural --

15 A. Harvesting and silvicultural  
16 prescription are impossible to achieve under these  
17 conditions.

18 Q. All right.

19 A. Or the results of.

20 Q. Do you believe that you are able--

21 A. Manipulate the stand?

22 Q. --to prescribe silviculturally and  
23 operationally in terms of equipment prescriptions which  
24 would make it possible?

25 A. Yes.

1 Q. To recreate mixed woods?

2 A. Yes, yes.

3 - MADAM CHAIR: Mr. Marek, is that using  
4 the equipment and technology of today?

5 THE WITNESS: In some cases, yes, but  
6 using different prescription, manipulative prescription  
7 which are not high-grading or clearcutting and things  
8 like that. It has to be more complex silvicultural  
9 prescription.

10 MR. FREIDIN: Q. Now, I am just  
11 wondering whether you could describe for me a  
12 prescription using today's technology where this might  
13 be achieved?

14 A. Sir, Madam, I have shown you slides  
15 of white spruce regeneration by seed tree method which  
16 is hardly mentioned in the silvicultural prescription  
17 for, silvicultural guidelines for spruce. I have shown  
18 you that perhaps some quite different from the present  
19 application has to be used.

20 I agree that these methods are not being  
21 applied as yet, therefore, the question asked by  
22 counsel here, we have to change our philosophy on mixed  
23 wood management in the areas of multi-forestry. I  
24 cannot see that you can achieve multiple-purpose  
25 forestry or multi-forestry unless we going to change

1 some of these cutting practices and silvicultural  
2 prescriptions.

3 And if you ask how we going to go exactly  
4 about it, you can spend with me on a seminar, I can  
5 give seminar maybe two, three hours how I have done it,  
6 how I can achieve it. But I agree, there's nothing of  
7 it in the spruce guidelines here or any guidelines  
8 there. I think the problem is out there, in general  
9 terms, applying the status quo we will not achieve it,  
10 but we have to change our approaches and...

11 Q. All right. A couple of questions  
12 arising from that, Mr. Marek.

13 A. Yes, I bet you.

14 Q. Do we have mixed wood stands without  
15 white spruce in them?

16 A. Oh yes, there are mixed wood stands,  
17 birch, black spruce association, white pine, red pine,  
18 there is all kind of mixed wood stands.

19 Q. So obviously then in the mixed wood  
20 stand without white spruce, using the white spruce seed  
21 tree method wouldn't be recreating -- you couldn't even  
22 do that because --

23 A. Of course not.

24 Q. Okay.

25 A. No, no. You asked me the question

1 with other conditions, so my answer is yes.

2 Q. All right. Assuming you've got a  
3 mixed wood stand with white spruce in it, you've  
4 indicated that the silvicultural way to recreate that  
5 mixed wood stand would be through the white spruce seed  
6 tree method?

7 A. Seed tree method, yes.

8 Q. Now, that would I guess address how  
9 you got white spruce back?

10 A. No, you get poplar automatically  
11 back, you get balsam back. No, sir, I have several  
12 examples of this practical where we create very similar  
13 condition. I have done it, sir.

14 Q. So are you saying that the species --  
15 in a case where you've got white spruce in the mixed  
16 wood stand, that you can get back the same amount of  
17 white spruce through your seed tree method and then all  
18 the other species which were there will come back  
19 naturally?

20 A. Yes, if you manipulate the proper  
21 timing, if you do it properly as foresters should.  
22 Sir, I wish I had the opportunity to show the Board the  
23 results. We had opportunity to see during the trip,  
24 unfortunately, you didn't. Yes, that...

25 Q. All right.

1                   A. May I point to the Board one  
2 important thing, that this is done in Europe in  
3 forestry steady, where you manipulate species to  
4 certain mixtures according to priority and according to  
5 goal and objectives. All the time as a young forester  
6 I have manipulated five different species to get the  
7 combination as should be there and desire. This is new  
8 in Canada, at least in northern Ontario, because we  
9 like to have it simple, we like to have it done  
10 cheaply, as quick as possible, therefore, that kind of  
11 forestry of course is simple, but if you talk about  
12 manipulation of stands to certain association, then you  
13 have to use different dynamics.

14                   If the Board is not aware of it, please  
15 come and visit me, I show you that.

16                   Q. Is it your evidence, Mr. Marek, that  
17 in any mixed wood stand which has a conifer component--

18                   A. Yes.

19                   Q. --let's say 40 per cent black  
20 spruce--

21                   A. Yes.

22                   Q. --that you can return that stand to  
23 black spruce 40 and with an equal plus or minus  
24 composition of the other species through natural means  
25 only, that you don't have to plant?

1 A. No, you don't have to plant.

2 Q. In no cases -- it's your evidence  
3 then, in no cases would you have to plant black  
4 spruce--

5 A. No.

6 Q. --to get back the same composition--

7 A. No, sir.

8 Q. --in that stand?

9 A. No, sir.

10 Q. That is your evidence, though; you  
11 wouldn't have to?

12 A. I have the evidence for it.

13 Q. No, you say you wouldn't have to?

14 A. No, you wouldn't have to plant.

15 Q. I just want to understand your  
16 evidence. Thank you. And is your evidence the same  
17 for jack pine, sir?

18 A. Oh, jack pine is different specie,  
19 jack pine is specie where you have to use a different  
20 approach because you are dealing with different sites,  
21 productivity sites, different ecosystem altogether and  
22 this, again, is a problem of what I have written down  
23 and maybe we should memorize it because that's a Bible  
24 of forestry.

25 No, you have to consider other things

1 because you are dealing with different species and  
2 different site conditions.

3 Q. All right. So do I understand you  
4 correctly then, if what you want to do is get jack pine  
5 that was taken out of a mixed wood stand, it might very  
6 well be necessary to plant to get that back?

7 A. Again, in many cases you can get it  
8 naturally too because jack pine is not one of the  
9 species is entirely depend on wild fire. In Europe  
10 many jack pines are naturally regenerated due to the  
11 many complex prescriptions but, no, you can get  
12 proportion of these back by just manipulating stands  
13 and jack pine is included in that.

14 But when you talk about pure jack pine  
15 stands, I thought you were talking about pure jack pine  
16 stands, you know, coniferous biome, then of course the  
17 prescription are different.

18 Q. No, I was talking about a mixed wood  
19 stand.

20 A. Still mixed wood, yeah, okay.

21 Q. So is your evidence that in mixed  
22 wood stands where you're trying to get back the jack  
23 pine component, that in those circumstances it's  
24 necessary to plant?

25 A. Oh, I'm against jack pine planting,

1 sir, and I do not believe that jack pine should be  
2 planted, period. I am not -- here, I am outside my  
3 testimony because I don't deal with jack pine  
4 management here and perhaps we would make it too  
5 complex, no.

6 But, Madam Chair, jack pine can be  
7 regenerated by other means, which is seeding and which  
8 may be natural or artificial, but I think that to plant  
9 jack pine under -- under certain circumstances where  
10 you have a high quality genetic stocks, improved stock,  
11 then planting I think on certain sites, yes, it is  
12 valuable tool.

13 But unless we have it, and there are sign  
14 that we are going to probably search for long time to  
15 get jack pine genetically improved stock, I would  
16 probably turn to the natural regeneration rather than  
17 the artificial regeneration. But that has is nothing to  
18 do with black spruce, sir.

19 Q. Do I take it then that your evidence,  
20 Mr. Marek, is that in areas other than these areas  
21 which might get set aside for single purpose forestry,  
22 that there is no place whatsoever for planting black  
23 spruce or jack pine?

24 A. Just in the reverse, sir. Just in  
25 the reverse; in other words, I'm saying you can't...

1 Q. No, I'm saying -- listen to me, I'm  
2 talking about the areas which are extensive.

3 A. No. Intensive, you said intensive.

4 Q. No, no. All right. Let me repeat  
5 the question. I may have made a mistake.

6 A. You said intensive there.

7 Q. All right. In the areas which you  
8 described as where you would practise extensive  
9 silviculture, okay?

10 A. Nothing to do with extensive, sir. I  
11 object to that term because that is what we are doing  
12 right now, we are practising extensive in multi-purpose  
13 forest, please.

14 Q. Okay. Well then, you have to help me  
15 out here. Go back to Exhibit 1416A which are the  
16 silvicultural prescriptions for Forests for Tomorrow,  
17 please.

18 A. Yes.

19 Q. And let's look at the very first  
20 page.

21 A. Yes.

22 Q. And at the bottom of the very first  
23 page it says that:

24 "Silvicultural prescriptions shall  
25 require the use of extensive silviculture

1 on all sites and stands capable of  
2 natural regeneration of primary coniferous  
3 species, however...", then it goes on to  
4 talk about intensive silviculture.

5 A. Exactly.

6 Q. Now, let's first of all talk about  
7 intensive. Where this says intensive silviculture,  
8 does it mean the areas that you have described in your  
9 evidence that perhaps should be set aside for intensive  
10 single-purpose forestry?

11 A. Yes.

12 Q. All right. So it does not refer then  
13 to what the Ministry and Industry describe as intensive  
14 silviculture and which you said is not intensive  
15 silviculture at all?

16 A. No, not at all, because we don't  
17 practise intensive silviculture and we don't practise  
18 "extensive", and that is why I put it in the quotes,  
19 extensive silviculture. And please note these quotes  
20 because I am extremely alarmed about that usage of  
21 extensive silviculture. Okay.

22 Q. Okay. So if intensive silviculture  
23 in these terms and conditions means the kind of  
24 silviculture you would practise on the areas you would  
25 set aside for single purpose.

1 A. Yeah, and that is...

2 Q. And intensive silviculture is what  
3 you would practise on the other areas?

4 A. No, that's a misinterpretation of  
5 words.

6 Q. All right. Let me just go back then.  
7 If you've got -- the area where you don't practise  
8 intensive silviculture is multi-purpose forests?

9 A. Okay. Multi-purpose forestry, okay.

10 Q. Okay. Now, explain to me what you  
11 meant by the phrase extensive silviculture then in  
12 1.1(h)?

13 A. In extensive silviculture, sir, is a  
14 silviculture which is well known to you and most of the  
15 foresters. On an extensive area we practise kind of  
16 silviculture which may be combination of tree planting,  
17 mostly tree planting, mostly tree planting, mostly tree  
18 planting, but it's done over the large extensive area.  
19 That's extensive.

20 Now, intensive silviculture on the other  
21 side is a silviculture which is practised in area  
22 allocated for timber production and means that you  
23 plant genetically improved stock, you take all  
24 precautions to eliminate the risks, plan for the risks,  
25 and watch dynamic of the forest which is one purpose

1       only, and that is timber.

2                   Q.   Okay.

3                   A.   Okay.  Now, are we clear on that?

4                   Q.   We are getting there, we are getting  
5       there.

6                   A.   Oh, good.

7                   Q.   You are being helpful.  If the  
8       definition of extensive silviculture is as I've got you  
9       down--

10                  A.   Right.

11                  Q.   --the practising over large extensive  
12       areas of combination of prescriptions, mostly planting?

13                  A.   What's happening now.

14                  Q.   Right.  No, that's what you said the  
15       definition was.  That's what it means; is that right?

16                  A.   That's right.

17                  Q.   Then I read this term and condition  
18       and it says that is what you are required to do on all  
19       sites and stands capable of natural regeneration and,  
20       sir, I think --

21                  A.   We are still arguing about it.  It's  
22       in quotation mark there, sir.

23                  Q.   I know it's in quotation marks and  
24       that's why I asked you what it meant.

25                  A.   Okay.  Start all over again.

1 Q. Let me put it this way. What are --

2 A. Prerequisites.

3 Q. What are you requiring to be used on  
4 sites and stands capable of natural regeneration of  
5 primary coniferous species?

6 A. All sites which will be, which will  
7 be multi-purpose forestry.

8 Q. Right. And on all the forests which  
9 are multi-purpose forests, are you saying that this  
10 should be interpreted as saying you would be required  
11 to regenerate those stands naturally to primary  
12 species?

13 A. That's correct.

14 Q. All right. So we can take the words  
15 extensive silviculture right out of that term and  
16 condition?

17 A. Yeah, but this is a problem that we  
18 are using it all the time, sir.

19 Q. No, no, I know, but you don't want to  
20 use it; is that right, you don't like the word?

21 A. No, I don't like that word if it's  
22 not applicable.

23 Q. All right. I suggest then if you  
24 wanted this to reflect what you would like, you  
25 wouldn't even use the word extensive silviculture and

1       you would say that there should be a prescription that  
2       would require the use of natural regeneration on all  
3       stands capable of regenerating primary coniferous  
4       species unless it's in one of your intensive areas?

5               A. Right.

6               Q. All right. Thank you. And to the  
7       extent that the words don't reflect that, you would  
8       want the words changed?

9               A. That's why I put it in the quote,  
10      quotation marks. See, that word is so indiscriminately  
11      used. We are indulging here in terms which is  
12      frequently used and shouldn't be used. That term  
13      should be more specific and have specific designation.

14              Q. Right. Now, Mr. Marek, I would ask  
15      you please to let's look at -- can you pick up your  
16      copy of the terms and conditions.

17              A. Yes.

18              Q. All right. And you've got -- at the  
19      bottom. Now, where we've gotten so far with this  
20      discussion about (h), as I understand what you've just  
21      told me is this: On areas which should be designated--

22              A. Mm-hmm.

23              Q. --for single purpose; i.e., high  
24      volume forest production, timber production.

25              A. Right, yes.

1 Q. You can practise what you've  
2 described as intensive silviculture on page 2?

3 A. Right.

4 Q. Which means planting, tending and all  
5 those things?

6 A. Right, not leaving trees standing for  
7 seed purposes and so on.

8 Q. Sure. All right.

9 A. Probably should be cut too; in other  
10 words, it's clearcut. Okay, okay.

11 Q. All right. And in those areas, the  
12 areas that you described as intensive, the kinds of  
13 prescriptions and the kind of attention that you give  
14 to the areas would be similar to your Limestone  
15 plantation or what they do in Europe?

16 A. Correct, yes.

17 Q. In all the other areas, you call that  
18 multi-purpose forestry areas, or multi-purpose forests?

19 A. Correct.

20 Q. You should still be allowed to  
21 practise timber management there; yes?

22 A. You are managing the forest so there  
23 is timber there of course.

24 Q. Okay. And on all that other area you  
25 are saying that on all sites you should in fact -- on

1 sites capable of natural regeneration of primary  
2 coniferous species, you should use natural  
3 regeneration.

4 A. Correct, it's been stated many times  
5 before.

6 Q. Is it your view that all sites in the  
7 boreal forest which would not be identified for this  
8 intensive management that you call--

9 A. Correct.

10 Q. --that they are all capable of being  
11 naturally regenerated to primary coniferous species?

12 A. Yes.

13 Q. The bottom line then is that in the  
14 areas which would not be set aside, as you have  
15 described them, artificial regeneration would be  
16 prohibited?

17 A. Would you repeat it, please?

18 Q. I take it from your answer--

19 A. Yeah.

20 Q. --that if all the areas in the multi-  
21 purpose forest are in your view--

22 A. Yes.

23 Q. --capable of being regenerated--

24 A. Yeah.

25 Q. --naturally to primary coniferous

1 species, that in the area which you call multi-purpose  
2 forest--

3 A. Yes.

4 Q. --the use of artificial regeneration  
5 methods would be prohibited?

6 A. No.

7 Q. In what circumstances would they be  
8 permitted?

9 A. In case of failure of natural  
10 regeneration. Madam, we repeat things what we have  
11 said. In case of natural regeneration fails, of course  
12 you are bound to put the sites into production, so you  
13 will have to plant trees obviously.

14 MADAM CHAIR: And the failures are not  
15 necessarily included in your list of silvicultural  
16 exceptions?

17 THE WITNESS: That's right.

18 MADAM CHAIR: A failure is just an  
19 obvious reason why you would use artificial methods.

20 THE WITNESS: That's right.

21 MR. FREIDIN: Q. Now, in terms of jack  
22 pine--

23 A. That's right.

24 Q. --do these terms and conditions in  
25 fact require the use of natural regeneration methods?

1 They do, they do the way I read them.

2 A. Well, I don't, I don't present the  
3 case for jack pine, sir. And if -- however, if Board  
4 like to have presentation of jack pine and my theories  
5 on jack pine I would greatly surprise them, but I am  
6 not -- this is, as you know, the term is very clear.

7 Q. All right. The term and condition --  
8 and I tell you, I'm going to ask you the question, Mr.  
9 Marek, because you were asked by Ms. Swenarchuk which  
10 parts of these terms and conditions that you weren't  
11 endorsing and I think you indicated you weren't dealing  
12 with the parts for white pine, red pine, and white  
13 birch and tolerant hardwood species, but I think you  
14 did indicate you were dealing with jack pine.

15 A. I am gladly, if the Board allows me  
16 and we going to start discussing jack pine management  
17 or prescription, I will gladly supply them, if Board  
18 allows.

19 MADAM CHAIR: Well, you have given us  
20 some evidence already about jack pine, Mr. Marek.

21 MR. FREIDIN: Q. We have heard evidence  
22 at the hearing from foresters who have practised in  
23 areas where they manage jack pine.

24 A. Right.

25 Q. We have heard evidence that the

1 ability to naturally regenerate jack pine through the  
2 distribution of slash--

3 A. Mm-hmm.

4 Q. --and cones--

5 A. Scarification, yeah, that's right.

6 Q. --is not universally successful  
7 across the area of the undertaking. We have heard that  
8 that method appears to be more successful in  
9 northwestern Ontario, but not so in all cases in  
10 northeastern Ontario.

11 A. I heard that statement, yeah.

12 Q. All right. Now, assuming that that  
13 evidence is true, if a forester in northeastern Ontario  
14 has a jack pine stand and he says based on his  
15 experience in trying to regenerate black spruce  
16 naturally through the distribution of slash it doesn't  
17 work -- jack pine, I'm sorry, it doesn't work like it  
18 does in northwestern Ontario, and he says I think I  
19 would be wasting my time to try to do ths naturally and  
20 the best thing to do for this site is to plant this  
21 site or artificially seed it, what would you say to  
22 him; would you say he couldn't do it?

23 A. Well, I would be very careful, very  
24 careful, unless I see the condition and I see the  
25 intimate condition of the site and circumstances to

1 tell him one way or the other and I can give examples.

2 Well, you started the subject so please  
3 let me explain what this means really in practice.

4 Many of these trials, not only in eastern -- or  
5 northeastern Ontario but also in our area and western  
6 Ontario, the natural seeding from the cone-bearing  
7 slash was abandoned because it didn't result in  
8 desirable stocking, and reason being that for years we  
9 have a serious problem of proper site preparation on  
10 sites which were so badly, so badly infested by slash,  
11 debris; in other words, we did not have tools, and from  
12 my own experience I didn't have a tool where you can  
13 prepare enough microsites or viable microsites in order  
14 to succeed in this seeding.

15 Now, that is a problem of logging. If  
16 you have right from the beginning everything against  
17 you by sheer amount of slash which was up to here and  
18 you start site preparing, of course, you immediately  
19 going to realize that the failures will be frequent,  
20 and I have experienced that on many occasion, that the  
21 foresters instead of pushing better utilization,  
22 elimination of slash, just give up on seeding, period,  
23 and says we would rather plant.

24 I have, it's matters of fact mentioned  
25 here in my report to the Minister that time in 1984,

1 where you going to visit with the site which you cannot  
2 reach the bottom, you cannot reach the forest floor or  
3 the mineral soil. So on account of that, lots of  
4 people, foresters, switched and say we going to plant.

5 And I think that was unwise decision and  
6 I think it's a decision which I never would agree to  
7 considering there is an option to eliminate slash, use  
8 proper site preparation, and have better results by  
9 seeding. Okay, that's...

10 Q. Seeding -- and when you say  
11 seeding --

12 A. Well, seeding from the cones, from  
13 the cone-bearing branch or additional seeding by  
14 seeding artificially.

15 Q. So you could artificially seed those  
16 but you couldn't plant them?

17 A. Well, you see, unless you have a  
18 proper site preparation you are failing everywhere.

19 Q. Two questions arising out of that,  
20 Mr. Marek.

21 A. Yes.

22 Q. I explained to you the position that  
23 a forester practising in northeastern Ontario might be  
24 in, he might say, look it, my experience indicates that  
25 it just won't work.

1 A. I would say why immediately.

2 Q. One of your responses was, about this  
3 problem was slash.

4 A. Yes.

5 Q. Do you believe, Mr. Marek, that you  
6 have sufficient experience with jack pine management to  
7 say that all of those sites which did not regenerate  
8 through the spreading of slash on the sites was due to  
9 the improper handling of slash?

10 A. Ah. I just gave you one example,  
11 sir, there might be all kind of other reasons. When  
12 you talk about management of certain species, you are  
13 dealing with fairly complex system, but if you -- if I  
14 may say, Madam Chair, that that was one of the primary  
15 reason of poor site preparation and failure of proper  
16 microsites and failure of seeding, please take it in  
17 the total consensus of jack pine management. I  
18 cannot -- you know, I cannot take...

19 Q. I guess what I'm taking from your  
20 answer is that by saying to this forester that he can't  
21 plant, you're assuming that every situation where jack  
22 pine cones didn't lead to acceptable stocking in those  
23 stands was due to some improper activity?

24 A. Of harvesting.

25 Q. Of harvesting or site preparation or

1 leaving too much slash?

2 A. I didn't say that at all. I just  
3 tell you the general problem with slash which appear on  
4 many, many sites I have visited and abandoned for many  
5 reason and they switched to the planting.

6 Q. I understand that.

7 A. Yeah.

8 Q. So would you agree then that if in  
9 fact we're on an area where the forester, based on his  
10 experience, believes that he in fact in his judgment  
11 has carried out proper site preparation, proper  
12 harvest, has not damaged the site, it hasn't worked and  
13 he wants to plant, shouldn't he be allowed the latitude  
14 to plant in those circumstances?

15 A. Well, first, you are again touching  
16 on subject which is so dear to me, how long the  
17 forester was there, how long he experiment, how sure is  
18 he that indeed there are some other circumstances,  
19 because most of the cases I know foresters stay only  
20 there for few years, and I don't think they really  
21 explore the possibilities. That's the other things  
22 which comes in.

23 Q. What happens, Mr. Marek--

24 A. If the forester...

25 Q. --if he decides to experiment with

1     . natural and it turns out that it just doesn't work,  
2     he's experimented, it doesn't work, now he's got a real  
3     problem on his hands, he's going to have a lot of  
4     trouble going back there and planting now; isn't he?

5             A. Oh, that's a great simplification of  
6     processes, sir.

7             Q. Well, I suggest it's no less simple  
8     than your prophecy that natural regeneration won't work  
9     anywhere, Mr. Marek?

10            A. Only I have done it for 40 years and  
11     some foresters stay only there for two years. How is  
12     that for size, or consideration?

13            Q. Are you suggesting that there are no  
14     foresters who practise in the Province of Ontario in  
15     relation to jack pine who have sufficient experience to  
16     voice an opinion and act upon it which is contrary to  
17     yours?

18            A. Not at all. I am not even talking  
19     about it, I'm saying that the cases where foresters  
20     have switched these systems, I'm talking systems of  
21     regeneration of jack pine, that they were improperly  
22     informed about the other possibilities and, gosh, what  
23     more, what more can I add.

24            I know the cases where planting was  
25     justified, but I know many cases where planting was not

1 justified.

2 Q. If planting was justified in some  
3 cases then, why are you prohibiting it then in  
4 multi-purpose forests, or are you saying that wherever  
5 it's justified are areas which should be just set aside  
6 as intensive management areas?

7 A. I'm not prohibiting anything. What  
8 I'm saying, that sound forestry requires certain  
9 specific on sites which I'm dealing with or we will be  
10 dealing with, and natural regeneration and especially  
11 seeding should be replacing in many instances planting.  
12 That's what I'm saying, sir, and don't please don't  
13 drag me into the situation where I going to start prove  
14 somebody who is on the -- if the timber management plan  
15 prescribes certain prescription and these are  
16 justified, surely, if they say that jack pine should be  
17 planted, go to it.

18 Q. All right. If the timber management  
19 plan says that it should be planted--

20 A. That's right.

21 Q. --you say go to it?

22 A. Yes.

23 Q. Should these terms and conditions  
24 that Forests for Tomorrow put forward be interpreted--

25 A. In multi-purpose forestry.

1 Q. --in multi-purpose area, be  
2 interpreted so as to allow that decision to be made  
3 when the forest manager believes it's appropriate?

4 A. In multi-purpose forestry, if it's  
5 going to be a prime practice, we have to take a good  
6 second look on these options, that's what I'm saying,  
7 and I personally feel - that's my personal opinion, and  
8 FFT opinion, Forests for Tomorrow - which clearly  
9 states that we will allow certain areas, sites to be  
10 clearcut, we promote natural regeneration by seeding  
11 rather than planting. So what seems to be the problem?

12 MR. FREIDIN: I think it might be a good  
13 time for a break, Madam Chair.

14 MADAM CHAIR: Afternoon break, Mr. Marek.  
15 The Board will be back in 20 minutes.

16 MS. SWENARCHUK: Madam Chair, to your  
17 knowledge are all of the parties planning to attend  
18 this four o'clock session having to do with scheduling  
19 the other parties?

20 MADAM CHAIR: I have no idea. The only  
21 written correspondence we've received is from Mr.  
22 Hunter, and I don't know --

23 MS. SWENARCHUK: He is or is not  
24 attending.

25 MADAM CHAIR: He is not coming and we

1 have a letter from him. If you want to see that, you  
2 can get a copy from Mr. Pascoe. But we have no  
3 other -- nothing else in writing from the other  
4 parties. So I don't know who's coming.

5 MS. SWENARCHUK: Thank you.

6 ---Recess taken at 2:50 p.m.

7 ---On resuming at 3:15 p.m.

8 MADAM CHAIR: Thank you. Please be  
9 seated.

10 Mr. Freidin?

11 MR. FREIDIN: Q. Mr. Marek, just before  
12 the break you said that you had observed planting that  
13 was proper, in terms of proper to be planting in the  
14 circumstances?

15 A. Yes.

16 Q. Were those observations made in areas  
17 which would be classified as multi-purpose forest areas  
18 according to your definition?

19 A. Well, we haven't got as yet  
20 designation of multi-purpose forest or forestry in  
21 general, we have just idea of what it is and where and  
22 so on, so how can you ask me hypothetical question if I  
23 have seen planting in that multi-purpose forest.

24 Q. All right. Well, we're going to get  
25 into that in a moment in terms of there not being a

1 definition, but you have had in your mind obviously, it  
2 seems to me from your evidence, two different forests;  
3 one where you do things intensively--

4 A. correct.

5 Q. --and one should be called  
6 multi-purpose.

7 A. Yes, yes.

8 Q. And I have assumed that you had some  
9 picture in your mind or some idea as to what the  
10 characteristics--

11 A. Could be.

12 Q. --would be or should be.

13 A. Yeah, that's right.

14 Q. You do?

15 A. Yeah, I do.

16 Q. All right. Now, we will get into  
17 what those characteristics are in a moment, and I will  
18 give you -- because I want to explore that with you.

19 A. Yes.

20 Q. But keeping in mind what your  
21 definitions are of those areas where you made these  
22 observations of planting being proper, were any of the  
23 areas where you said it was proper to plant--

24 A. Yes.

25 Q. --areas which, according to your

1 concept, according to your definition, would fall  
2 within multi-purpose forest?

3 A. Yes.

4 Q. I take it, therefore, Mr. Marek, that  
5 you wouldn't want the terms and conditions of Forests  
6 for Tomorrow or, for that matter, anybody else to be  
7 interpreted in such a way that would prevent the proper  
8 use of planting in similar situations?

9 A. I certainly would prefer if planting  
10 was not apply or not necessarily, that's my answer,  
11 sir. And I had a good reason, good reason to say it,  
12 in case it was not necessary and perhaps shouldn't be  
13 done. On the other hand, if circumstances are that  
14 such as failure of natural regeneration or failure of  
15 thing, we always have this option of planting.  
16 That's...

17 Q. Were the situations, Mr. Marek, that  
18 you described as situations where it was proper to  
19 plant, areas where planting was done only after  
20 failure, or were they --

21 A. Oh, no, in quote "this kind of  
22 extensive forestry" which we are practising now and  
23 quote again, "the extensive forestry" where we are  
24 planting here, there, everywhere on the large area.  
25 No, it was done, planting was done and shouldn't be

1 done, let's put it that way.

2 Q. You described for me and you  
3 indicated -- well, you indicated to me that there were  
4 areas that you observed--

5 A. Yeah.

6 Q. --where planting was done and  
7 planting was the proper thing to have done?

8 A. No. What I just repeated again.

9 Q. No.

10 A. It was done but it shouldn't be done.

11 MADAM CHAIR: Mr. Freidin, Mr. Marek's  
12 evidence is pretty clear to the Board, and what Mr.  
13 Marek has said to the Board is that he would not see in  
14 the silvicultural prescriptions any prohibitions on  
15 planting, it is his intention that the first  
16 alternative a forester would look at would be natural  
17 regeneration and the silvicultural prescriptions are  
18 weighted towards a forester saying: Can I get natural  
19 regeneration here, if it fails, obviously planting is  
20 the fallback position.

21 MR. FREIDIN: And I understand that is  
22 his position, Madam Chair. What I'm exploring with  
23 him, if I just might for a moment.

24 Q. Is that when you said that you had  
25 observed planting which had been done and planting was

1 the proper prescription--

2 A. No, it was not proper. I said...

3 Q. Oh. Have you never then seen -- I  
4 guess we just go right back to where we started.

5 A. That's correct.

6 Q. You're saying that in multi-purpose  
7 forests natural regeneration must always under all  
8 circumstances be attempted first?

9 A. Explored. Madam Chair express it  
10 very eloquently, it should be explored first. And the  
11 secondary, if not apply or if it's failures or  
12 whatever, of course you have to resort...

13 Q. There is no room then in your vision  
14 of forestry in multi-purpose forests for a forester to  
15 say natural regeneration will not work, I'm not going  
16 to try it, I'm going to plant; there is no room for  
17 that?

18 MADAM CHAIR: Well, I think Mr. Marek has  
19 just said, Mr. Freidin, that if the forester explores  
20 that and he looks at it and he gives it his best  
21 assessment and he uses his professional judgment and  
22 says: Yes, I know it can't possibly work, then...

23 MR. FREIDIN: Q. All right. Is that  
24 right?

25 A. That's my reasoning.

1 Q. Explores it, doesn't have to try it,  
2 just has to think about it and consider whether it will  
3 work.

4 MADAM CHAIR: Mr. Freidin is saying, in  
5 every case would a forester have to wait 20 years to  
6 see that the forest didn't grow back naturally?  
7 Obviously not.

8 MR. FREIDIN: Madam Chair, I'm not trying  
9 to be a real word monger here.

10 MADAM CHAIR: Oh yes you are, Mr.  
11 Freidin.

12 MR. FREIDIN: Q. The reason I'm asking  
13 this - I guess I am - Mr. Marek, it says in 1.1(h), it  
14 says prescriptions shall require the use of natural  
15 regeneration on all sites which are capable of primary  
16 regeneration?

17 A. Capable, right there is capable.

18 Q. And you told me, you told me when I  
19 asked you generally, you said to me that in your view,  
20 as I understand your evidence, all sites in the areas  
21 of multi-purpose forests are capable?

22 MADAM CHAIR: For black spruce, is Mr.  
23 Marek's evidence.

24 MR. FREIDIN: Q. For black spruce and  
25 black spruce only is your evidence?

1           A. Well, the evidence is clear, sir,  
2           that I am talking of black spruce in most instances and  
3           when you go...

4           MS. SWENARCHUK: Madam Chair, wouldn't it  
5           cut this discussion short if Mr. Freidin would read the  
6           entire paragraph together.

7           At this point he's reading only one  
8           sentence of the paragraph and not the remaining part of  
9           it which relates intensive silviculture then to the  
10          first part of it with an economic perspective added.

11          MR. FREIDIN: Q. Well then, let's do  
12          this. Let's go to the second part then and let's talk  
13          about intensive silviculture, I might come back to this  
14          other area.

15          What are the criteria that you would use,  
16          Mr. Marek, to identify those areas which should be set  
17          aside for single purpose forestry or single use; i.e.,  
18          high production timber?

19          A. Didn't I testify to it, Madam, the  
20          areas close to the mill, high productivity, the  
21          recognition of necessity for timber production because  
22          it's -- but I think I explained it on several occasion.

23          Q. Well, I don't remember you doing it  
24          all in one location and I'm just wondering whether you  
25          could help me, sir, and identify criteria; close to the

1 mill, high productivity. Could you list for me the  
2 other criteria that you would use?

3 A. The labour force, the genetic  
4 improvement of stands, they are just a few, sir.  
5 the harvesting operation have to be adapted to it.

6 So there are many, many criteria. I just  
7 said four or five, but I'm quite sure when you talk  
8 about intensifying forestry or intensive forestry that  
9 there are quite a few criteria you have to consider  
10 before you make decision.

11 And please consider one very important  
12 one, that has been planned for, agreed, agreed by the  
13 public. Before they make that decision, the public  
14 should be a hundred per cent aware of your intent and  
15 the tools which will be used. Is that clear, please?

16 Q. I want to deal with this issue by  
17 distinguishing between criteria you would use to  
18 identify the areas, and how you might -- again, how you  
19 might actually operate on those areas once you had  
20 identified them?

21 A. May I give you a concrete example,  
22 Madam, because this could be no ending. We have this  
23 effort then on the St. Lawrence licence; in other  
24 words, in the Domtar, where we had a forester for year  
25 doing nothing else but investigating the possibility of

1 intensification and allocation of intensive management  
2 for timber production.

3 First what he has done was not only  
4 analyse the photographs and the documents, paper,  
5 paperwork, he did go in the field and really pinpoint  
6 these areas and to his great surprise - and I can bring  
7 that document if you like because I have, it's  
8 available to me - we have find that these areas were  
9 very limited because we were looking for certain kind  
10 of sites which not only 20 acres here or 50 acres over,  
11 we were talking about fairly large area where you can  
12 practise intensive management for timber production.

13 And the criteria is available, I can  
14 bring it up here and make it part of the testimony.

15 Q. That was one example, sir. Your  
16 evidence, as I understand it, you have said that there  
17 are no areas at the moment set aside for single  
18 purpose, that you think that would be a good idea.

19 A. To do that?

20 Q. To do that?

21 A. Absolute necessity.

22 Q. And what I'm saying is this is your  
23 opportunity to indicate to the Board how you would go  
24 about identifying those areas?

25 A. I just said so.

1 Q. But you've said close to the mill?

2 A. Well, there is five or six of them I  
3 identify already.

4 Q. The reason I'm exploring this with  
5 you, Mr. Marek, is because I want to -- if the Board is  
6 going to accept your suggestion that such areas should  
7 be set aside--

8 A. Right.

9 Q. --I don't see how they can do that if  
10 they're going to identify, without the criteria.

11 A. Okay. I have mentioned five.

12 Q. Well, you have mentioned close to the  
13 mill, you have mentioned high productivity.

14 A. That's right.

15 Q. You mentioned labour force. I take  
16 it that is labour force to do the intensive management?

17 A. To do the intensive, that's correct,  
18 continuous.

19 Q. You have mentioned --

20 A. Availability of professional people  
21 to do it; in other words, you are talking about  
22 foresters or forest manager who will be entrusted with  
23 this high productivity area, and that doesn't mean that  
24 he goes there every once a while, he got to be there  
25 fairly steady.

1 Q. Yes.

2 A. Okay. The other thing is the  
3 necessity for these area in the first place, because in  
4 order to establish where you have, you must have a good  
5 reason, and that reason being possible shortages of  
6 wood, the requirements to specific products where you  
7 are going to intensify your management.

8 So there are -- I would probably come up  
9 with dozen of these things if...

10 Q. Now, there must be a good reason for  
11 it?

12 A. Oh yeah, I just gave you some.

13 Q. All right. I know, and let me see if  
14 I can deal with one of these. High productivity.

15 A. Yes, yes.

16 Q. I think in your evidence you referred  
17 to pure black spruce stands.

18 A. Oh yes, I was dealing with black  
19 spruce stands, yes, yes.

20 Q. And would pure black spruce stands  
21 fall within the areas that might be or should be set  
22 aside to intensive management, regardless of where they  
23 were located in relation to the mill?

24 A. Please, one of the criteria it's got  
25 to be close to the mill, it's got to be done on sites

1 and so on, and so you are asking me if you can do this  
2 anyplace, is this what you are talking about. No, I  
3 don't think it could be anyplace. Obviously I wouldn't  
4 start intensified management area 200 miles away from  
5 Red Rock or from Spruce Falls or from Abitibi mill in  
6 Thunder Bay.

7 No, there are limited options, I agree,  
8 but they have to be explored.

9 Q. Can you estimate for me, sir, what  
10 percentage of the area of the undertaking you think  
11 we're talking about when you say: Look it, we are  
12 going to set aside areas for this intensive management?

13 A. I cannot. I can be only general and  
14 based on my report to Domtar, which we have given to  
15 Domtar and we have documented it, we thought in the  
16 vicinity of -- and again, I have to go back to the map  
17 here of the --

18 Q. Which report are we talking about?

19 A. You know where I am talking about,  
20 Madam Chair.

21 MADAM CHAIR: Yes, the Domtar FMA.

22 Mr. Marek, I think your suggestion that  
23 you could produce that report is a good one and perhaps  
24 Ms. Swenarchuk could make the arrangements for the  
25 report that you authored with respect to the Domtar --

1 THE WITNESS: That's right.

2 MADAM CHAIR: FMA and the identification  
3 of--

4 THE WITNESS: Priority site, intensive  
5 management site, that's correct.

6 MADAM CHAIR: --intensive management  
7 areas would be helpful to the Board.

8 MS. CRONK: May I understand more  
9 clearly, Madam Chair, what report it is that we're  
10 speaking of?

11 MADAM CHAIR: When was the report done,  
12 Mr. Marek?

13 THE WITNESS: This report was done right  
14 I think 197 -- after we finished the report by Clemmer,  
15 immediately we got into this intensification because we  
16 have seen the problem, you know, on the licence  
17 overall, this decreased growth, and so I have  
18 instigated this study where we going to intensify the  
19 management, Limestone and the other being part of this  
20 whole scheme.

21 It must have been done 1979 or 1978 or  
22 '80. I have that report home, Madam -- no, I haven't  
23 got it with me in my room. I can deliver right after I  
24 get back from Beardmore.

25 MR. FREIDIN: Perhaps when you get to --

1 well, I'll talk to Ms. Swenarchuk about this later.

2 MS. CRONK: Thank you, Madam Chair, I'm  
3 grateful for that. I obviously have no objection to  
4 any information that the Board would regard as useful  
5 being placed before it, but I do have to reserve, if  
6 it's intended this document be filed, the right to deal  
7 with it as appropriate either in evidence or in  
8 cross-examination. Mr. Marek won't be here at the time  
9 it's filed unless it occurs tomorrow. I haven't had a  
10 chance to speak to the Domtar people.

11 MS. SWENARCHUK: It appears that it will  
12 happen next week, Ms. Cronk, and he will be here.

13 MS. CRONK: Well, if that's the case,  
14 then I would have to reserve, if I may through the  
15 Board, a right to ask any questions that appear  
16 appropriate at that time of Mr. Marek while he's here.

17 MADAM CHAIR: All right, Ms. Cronk.

18 Okay, Mr. Marek, you were going to tell  
19 us, based on the Domtar example, what per cent of the  
20 area --

21 THE WITNESS: Well, it's in the report.  
22 This is a fairly, exist around hundred pages report on  
23 this particular field of intensified --

24 MADAM CHAIR: Does it have a summary; no?

25 THE WITNESS: That's a cop-out.

1 MS. SWENARCHUK: Will the Boards pay for  
2 its reproduction, Madam Chair?

3 THE WITNESS: That is -- that's not good  
4 forestry.

5 MADAM CHAIR: It's good Board management,  
6 Mr. Marek.

7 THE WITNESS: I'm not the Board, Madam.

8 MADAM CHAIR: What was your estimate of  
9 that area in the Domtar situation?

10 THE WITNESS: Approximately 35 per cent  
11 of total productive forest land.

12 MR. FREIDIN: Q. 35 per cent?

13 A. 35 per cent.

14 Q. Of the productive--

15 A. Productive, total productive forest  
16 land which is over 2-million acres, we have allocated  
17 approximately, I think it was 30 and 35 per cent, I'm  
18 not quite sure, yeah, 25 per cent from the area could  
19 be allocated to intensive. It was surprisingly very  
20 small area.

21 MADAM CHAIR: Was this the area that was  
22 identified as being eligible for harvest, or was it the  
23 entire geographical area?

24 THE WITNESS: No, entire. That's right,  
25 entire, because this is completely new ballgame and I

1 thought that we have to consider the total area of  
2 productive forest land where we could do and intensify  
3 it in that place by harvesting and following through  
4 silviculture, Madam.

5 MR. MARTEL: I almost hate to ask this  
6 question.

7 THE WITNESS: Please.

8 MR. MARTEL: How can you come up with a  
9 figure of 35 per cent if you don't know what the demand  
10 or what's out there? You said --

11 THE WITNESS: Oh no, we investigated  
12 what's out there.

13 MR. MARTEL: Oh, you're just talking  
14 about the one forest management unit?

15 THE WITNESS: That's right.

16 MS. CRONK: That's what I was going to  
17 rise on, Mr. Martel. Could I through the Board ask to  
18 be clarified, are we talking about the Lake Nipigon FMA  
19 per se?

20 THE WITNESS: That's right.

21 MS. CRONK: Or did it include part of the  
22 Domtar/Armstrong Crown Management Unit?

23 THE WITNESS: No, not Armstrong.

24 MS. CRONK: Lake Nipigon FMA?

25 THE WITNESS: Strictly Lake FMA, the old

1 licence, St. Lawrence licence 256. So it's in  
2 Beardmore area around Nipigon and then farther up north  
3 to Auden or to Auden Road.

4 MR. MARTEL: That was all of the land  
5 that would be --

6 THE WITNESS: Available to intensive  
7 forest management. When you stipulate what kind of  
8 area you are talking about this classification,  
9 geology, like Madam said yourself; in other words, very  
10 productive lands and --

11 MADAM CHAIR: Did you use the FRI  
12 classification of productive forest land?

13 THE WITNESS: Oh, we did more than that.

14 MADAM CHAIR: You went beyond that and  
15 made your own assessment?

16 THE WITNESS: We went beyond that, you  
17 have to go beyond, because FRI in many cases is not  
18 reliable source, so we had to really go over the total  
19 area and more or less reclassify many of these area in  
20 question and it did - but we finish it in one year, not  
21 even, it took only one year, we did it.

22 And Domtar is sharing this information,  
23 they got a copy of it, and matter of fact we had quite  
24 a discussion on account of the vice-president, I was  
25 called to Montreal and with the forester that time, the

1 Domtar man, and he said: Look, how we going to --

2 MS. CRONK: Madam Chair, excuse me for  
3 interrupting, but may I request that we not receive any  
4 hearsay from Mr. Marek as to what allegedly was or was  
5 not said by executives of Domtar with respect to this  
6 report.

7 MS. SWENARCHUK: Well, excuse me, but  
8 he's saying that it was said to him, it's not hearsay.

9 MS. CRONK: If I may just finish, Ms.  
10 Swenarchuk. This is the first time that this  
11 particular report has received the prominence in Mr.  
12 Marek's evidence that it now has, and in my submission  
13 it would be appropriate the report be placed before the  
14 Board, that he give his view as to the basis for it,  
15 what its conclusions were, and we can leave the matter  
16 there without attributing comments to others until  
17 we've had a chance to at least look at the paper.

18 MADAM CHAIR: Okay, Ms. Cronk. Mr.  
19 Marek, is this report available to the public?

20 THE WITNESS: No, it was not published,  
21 it was not advertised, it has been shown to the MNR or  
22 Lands & Forests bureaucracy -- or I think it was MNR,  
23 that's right, MNR bureaucracy and I could make -- I  
24 hope I can make a quote what kind of reception I got  
25 from that kind of research.

1                   MADAM CHAIR: Okay. Mr. Freidin, did you  
2 get an answer to your question?

3                   MR. FREIDIN: Well, I think sufficiently,  
4 now I'll await the report to see whether I have any  
5 further questions.

6                   Q. Mr. Marek, going back to term and  
7 condition 1.1(h) which indicates--

8                   A. What report are you talking about,  
9 counsel?

10                  Q. The Exhibit 1416A, the Forests for  
11 Tomorrow terms and conditions.

12                  A. Oh, terms and conditions, yeah, this.  
13 What page?

14                  Q. Turn to page 2, please.

15                  A. Yes.

16                  Q. It states that:

17                         "Intensive silviculture...", starting  
18 right at the top, "...may be used on sites where  
19 intensive silviculture is economically  
20 feasible and that present net worth of  
21 all direct costs and returns is  
22 positive."

23                  This is a part of the report that you had  
24 a hand in writing and which you endorse?

25                  A. Yeah, that's right.

1 Q. Could you tell me what present net  
2 worth is?

3 A. Pardon?

4 Q. What is present net worth?

5 A. Net worth, not met worth. Met worth,  
6 ha, ha, ha, ha. Net worth, n-e-t, w-o-r-t-h, two  
7 words.

8 Q. Yes. And what is present -- it says  
9 present -- all right. Well, what is --

10 A. Net worth is net money, what is it  
11 worth, what are you worth, daily.

12 Q. All right. And what does present net  
13 worth mean, or does that have no meaning to you?

14 A. Beg your pardon?

15 Q. What does it mean when it refers to  
16 present net worth? The word present is there, does  
17 that not have any meaning to you?

18 A. I have to put in context. It's  
19 economically feasible and that present net worth of all  
20 direct costs and returns is positive.

21 In other words, it's positive  
22 economically, net worth; in other words, we get  
23 benefits out of it which can count and it's marketable.

24 Q. Can I ask you again, does the word  
25 does the phrase present net worth have any special

1 meaning to you? How do you calculate present net worth  
2 or is there not a difference between present net worth  
3 and net worth?

4 A. Right now at this moment the worth is  
5 as much, two minutes later can be completely different.

6 Q. Okay. How do you calculate it?

7 A. There are many formulas how you  
8 calculate the present worth and future worth and  
9 imaginative worth and possible, there are all kind of  
10 different formula where you can deal with the dynamics  
11 of worth; in other words, isn't that so?

12 Q. I'm asking you as the witness.

13 A. No, no, I just...

14 Q. Is there any particular method that  
15 you are suggesting?

16 A. Oh, I am not -- first of all, I'm not  
17 economist, sir, but this net worth is used frequently  
18 in many economic formulas which I don't want to get  
19 into here because that's not my task to evaluate.

20 MADAM CHAIR: Mr. Marek, are you simply  
21 saying that whatever the level of investment that goes  
22 into regenerating the forest, the value of the timber  
23 has to be at least equal to that or more?

24 THE WITNESS: That's right.

25 MADAM CHAIR: And that you're not talking

1 about a specific economic term?

2 THE WITNESS: No, no, no. But it's used  
3 in economic evaluation all the time, Madam.

4 MR. FREIDIN: Q. And, Mr. Marek, when  
5 you endorsed these terms and conditions, how do you  
6 believe or how did you believe that the value of the  
7 timber would be calculated?

8 A. Cost/benefit analysis, simple as  
9 that; price of timber now on the world market is os  
10 much and the Canadian market is so much, the whole  
11 procedure of evaluating of input into regeneration and  
12 so on. This is normal, normal. How else would you do  
13 that?

14 Q. Were you looking at it in terms of  
15 markets--

16 A. In rotation age.

17 Q. --as a raw product, or value in terms  
18 of what it may be worth in terms of the kind of  
19 products that you could in fact make?

20 A. Oh, you have to have various input,  
21 but again I'm not economist and I'm here testifying on  
22 behalf of people who are better qualified I suppose  
23 later on.

24 Q. And I understand that this will be  
25 the subject matter of another panel, Mr. Marek.

1 A. I'm quite sure.

2 Q. But you have endorsed them and I just  
3 want to understand what you were endorsing. Did I  
4 understand you to say that you felt that part of  
5 determining, in your view, what the value of the timber  
6 is, is that you would have to assess and consider the  
7 value of the products which could be created from the  
8 timber?

9 A. Yes.

10 Q. Yes? Is the answer yes?

11 A. Yes, yes.

12 Q. Thank you. Could we then move on  
13 to -- let's go back to 1.1(g), please.

14 A. Are we talking about the same term  
15 and condition?

16 Q. Same document.

17 A. Yeah, 1(g).

18 Q. Yes.

19 A. Yes, prohibit harvesting on sites.

20 Q. Right,

21 "...that cannot be naturally or  
22 artificially regenerated..."

23 A. "...that cannot be naturally or  
24 artificially regenerated to the primary  
25 species." Yes.

1 Q. Now, I want to explore with you the  
2 relationship, if any, between that paragraph and the  
3 paragraph 1.1(a) -- pardon me, term and condition  
4 1.1(a) that we spent so much time on.

5 A. Yeah.

6 Q. You told me earlier today in relation  
7 to 1.1(g) that primary species included species which  
8 were presently desirable or which in the future may be  
9 desirable by Industry?

10 A. Yes, that dictates this kind of  
11 philosophy, yes.

12 MR. FREIDIN: Actually, Madam Chair, my  
13 mind is not going to be able to get around this one  
14 right now. I'm going to go on to something a little  
15 bit more straightforward and I'll come back to this  
16 later.

17 MADAM CHAIR: Mr. Freidin, a question.  
18 Has MNR discussed these terms and conditions with  
19 Forests for Tomorrow through the negotiation process?  
20 I know that these are revised.

21 MS. SWENARCHUK: No.

22 MADAM CHAIR: No. All right, fine.

23 MR. FREIDIN: I'm looking for an area  
24 that I can deal with in 15 minutes.

25 MR. MARTEL: I thought you were finished.

1 MR. FREIDIN: Oh no, no. My mind is  
2 finished on this right about now.

3 Q. Let's take out your book of  
4 photographs, Mr. Marek.

5 A. Book of photographs.

6 MS. SWENARCHUK: (handed)

7 THE WITNESS: Thank you.

8 MR. FREIDIN: Q. Photograph or slide  
9 137.

10 A. 137. Yes, 137.

11 Q. In relation to slide 137 you made  
12 reference to the chlorotic--

13 A. Appearance.

14 Q. --appearance of the black spruce.

15 A. Yes.

16 Q. Your evidence was that this usually  
17 means lack of nitrogen?

18 A. Of nitrogen, that's correct.

19 Usually, it may...

20 Q. But not always. What I would like  
21 you to do is explain what the other causes of chlorotic  
22 appearance might be.

23 A. Disease, pathogens, injuries.

24 There's a whole scope of signs, reasons for the signs  
25 of chlorotic appearance or yellowing of needles and so

1 on, but major -- you see, nitrogen is one of the most  
2 important element in the growth, therefore, nitrogen is  
3 always put forward as one of the most important lacking  
4 element and reason for it.

5 Q. One of the most likely causes. So if  
6 you look at a tree and it's chlorotic, that doesn't  
7 necessarily mean there's a nitrogen deficiency, it may  
8 be something else?

9 A. Well, you see, that's a secondary  
10 appearance. What's happened there, if you have insect,  
11 diseases and so on, that it actually restrict the flow  
12 of nitrogen or intake of mineralized nitrogen, so it's  
13 connected.

14 Q. all right. But the lack of nitrogen  
15 then is not necessarily the result of site productivity  
16 or nitrogen within the site, it may be a matter of  
17 something interrupting the flow of nitrogens into the  
18 tree?

19 A. Yes, correct. Mineralization of  
20 nitrogen, that's correct.

21 Q. Okay. In terms of spacing of  
22 plantations, you gave some evidence and you made  
23 reference to plantations with 500 trees per hectare.  
24 If you look at slide 142, for example.

25 A. 142, okay.

1 Q. 142.

2 A. That's the broken up jack pine young  
3 stands, 142, that's the damage by snow.

4 Q. Right. This is the one where you  
5 said the spacing was 12 by 12?

6 A. Yes. In jack pine stand was 12 by  
7 12, correct.

8 Q. Right. Which is about 308 by my  
9 calculation, 308 trees per hectare?

10 A. Boy, we are off there. Not at all.

11 Q. No?

12 A. Sir, you have to get your calculator,  
13 I cannot express it right now.

14 Q. Per acre?

15 A. Who's got -- when you have 12 by 12  
16 you are going to have probably about 7-, 800 -- 6-, 700  
17 per acre, multiplied by your area, 2. whatever it is,  
18 you have more than that, sir.

19 However, I haven't got a calculator here,  
20 but it's more than that.

21 Q. Mr. Waito has his calculator.

22 A. Good. I don't want anything to do  
23 with.

24 Q. You don't want anything to do with  
25 this?

1 A. No, not this one.

2 Q. All right. I'll come back to it.

3 A. Well, whoever's calculator it is.

4 Q. My information is it's 308 per acre.

5 Assuming for the moment I'm correct, that it's 308 per  
6 acre, which is 616--

7 A. 12 feet by 12 feet. You see 6 by 6  
8 is -- 6 by 6 is over 1,200 per acre, so...

9 Q. Can I put it this way. It's not a  
10 common practice to plant plantations these days at 12  
11 by 12 spacing; that's an uncommon prescription?

12 A. I agree, I agree.

13 Q. Thank you.

14 A. But please, may I bring to your  
15 attention that as far as I remember, and I can bring  
16 you document which recommends for very specific reason  
17 that spacing.

18 Q. I have the information that it's an  
19 uncommon prescription.

20 A. Yeah, okay.

21 Q. Slide 152.

22 A. Yes.

23 Q. Is a slide--

24 A. Showing vigorous.

25 Q. --of jack pine and black spruce

1       planted together?

2                   A.   That's right.

3                   Q.   Your evidence was that black spruce  
4       took off and that -- pardon me, jack pine took off and  
5       the black spruce was more conservative but eventually  
6       you said it will catch up and pass it.

7                   A.   Possibly.

8                   Q.   Possibly, okay. I just want to  
9       clarify with you, Mr. Marek, that the jack pine --  
10      pardon me, the black spruce being conservative and the  
11      jack pine taking off is what one would expect, that is,  
12      that is the natural manifestation of the different  
13      silvics of the species?

14                  A.   Correct.

15                  Q.   Thank you. Could you turn to  
16      photograph 158.

17                  A.   Yes.

18                  Q.   This is a stand -- this is jack pine  
19      shown here; is that correct?

20                  A.   Jack pine established by seeding of  
21      cut-over sites.

22                  Q.   And I understand that the seeding  
23      here was artificial seeding?

24                  A.   That is correct.

25                  Q.   And you I think indicated in your

1 evidence about this that we should note the small size  
2 and distribution of the jack pine on this upland, or on  
3 this bedrock outcrop; is that correct?

4 A. That's correct.

5 Q. What was the point that you were  
6 making, why were you bringing that to our attention?

7 A. The reason?

8 Q. Yes.

9 A. That you have a very questionable  
10 goals on these sites, that the presence of jack pine on  
11 these sites is marginal ingrowth, marginal in  
12 productivity due to the damage done to the site, and  
13 that was one of the reasons.

14 Q. Mr. Marek, could you take -- I'm  
15 looking at this photograph and could you point out to  
16 me any stumps from the previous harvest?

17 A. No, there were no stumps here.

18 Q. There were no trees on that bedrock  
19 outcrop?

20 A. Of course there were trees, but the  
21 other one was bulldozed off. By the way, in order to  
22 prevent misunderstanding, sir, this and this is the  
23 same time.

24 Q. 160 and 158 are the same time?

25 A. That's correct. This is before it

1 was seeded and this is so many years after seeding.

2 Q. All right. 160 is before seeding, I  
3 understand that, and 158 is a number of years  
4 afterwards?

5 A. That's correct.

6 Q. And you're telling me that the reason  
7 that there are no stumps from the previous harvest is  
8 because --

9 A. Of heavy damage by bulldozer.

10 Q. They've been removed and you can't  
11 see any remnants of it?

12 A. They were all dumped -- most of the  
13 stumps were dumped down in this hole here.

14 Q. Okay. Could you turn to slide 132.

15 A. Yes.

16 Q. As I -- my notes --

17 A. Go ahead.

18 Q. My notes indicate that this slide was  
19 comparing advanced growth on the site to the planted  
20 stock on the site?

21 A. In the corridors, yes.

22 Q. And the planted stock which is  
23 smaller is the one in the corridors?

24 A. That's correct.

25 Q. And you indicated that the natural

1 advanced growth of black spruce was much better.

2 A. Well, you can see the size of it,  
3 sir, you can judge the height comparing to the planted  
4 stock in the corridors.

5 Q. Isn't that what you would expect, Mr.  
6 Marek?

7 A. Oh yes, I expect that exactly.

8 Q. That the advanced growth would be  
9 taller because at the time that the black spruce was  
10 planted, the black spruce that was planted would be  
11 very small and the advanced growth which would have  
12 been there at the same time would already been much  
13 taller?

14 A. Yeah, yes.

15 Q. All right. So you would expect --  
16 you're not suggesting here that the advanced growth  
17 here -- I mean, that the black spruce should be as high  
18 as the advanced growth?

19 A. Not at all.

20 Q. Okay. I just wanted to clarify that.  
21 Thank you.

22 A. Not at all. But the question I am  
23 asking, why did we do it in the first place, why did we  
24 invest money planting when we could have advanced  
25 growth just being there. Why did we corridor it,

1 establish these corridors.

2 Q. Well, perhaps it what Mr. Carleton  
3 said in his article, or could it be what Mr. Carleton  
4 said in his article, that on some sites in some  
5 situations the amount of advanced growth is not  
6 sufficient in quantity to produce a stand which will be  
7 satisfactory.

8 A. Are you telling me that you cannot  
9 read that photograph and see the quality and density of  
10 that advanced growth which took over in the corridors  
11 which were not implemented.

12 Q. Well, let's talk about it generally  
13 then. Leaving aside the photograph, would you agree  
14 with me, sir, that on some sites in some situations the  
15 amount of advanced growth of black spruce is not  
16 sufficient in quantity to produce a stand which will be  
17 satisfactory and that in those circumstances planting  
18 or artificial seeding -- planting is a reasonable  
19 management decision?

20 A. Of course I agree with that, sir.  
21 Common sense tell you that here is something different  
22 to deal with, that we have destroyed advanced growth by  
23 very expensive corridor which costs around \$200 -- \$300  
24 per hectare, we cover the cost of planting which  
25 probably cost another \$300 where we could have natural

1 regeneration of these stands establish itself. And  
2 that is why I took it here, because I start, please,  
3 questioning wisdom of forest management prescription s.

4 Q. Yes. I want to ask a couple of  
5 questions on nutrient cycling.

6 A. Oh good you start. Okay, let's go to  
7 it.

8 Q. Well, maybe I should take some time  
9 to read that, I haven't had a chance to read that.

10 A. Oh I'm sorry, if I know I would have  
11 printed for you. Maybe I should do it tonight.

12 Q. No, no, I'll be able to read it. I  
13 just haven't read it now. Could we go to page 32 of  
14 the witness statement for Forests for Tomorrow.

15 A. Yes. Page 32?

16 Q. Page 32.

17 A. Yes, 32.

18 Q. Now, you state on page 32 in the last  
19 paragraph --

20 A. "It is my impression that full-tree  
21 harvesting has indeed been applied in  
22 Ontario hundred years..."

23 Q. "...ubiquitously and uncritically  
24 often with highly undesirable results' as  
25 Kimmins found in British Columbia."

1 A. Right.

2 Q. Now, the reference to Kimmins, I take  
3 it, is the reference to Kimmins which is in your source  
4 book dealing with the issue of sustained yield and  
5 other matters?

6 A. Yes, yes, yes.

7 Q. And am I correct, sir, that -- why  
8 don't you just -- well, maybe you can agree with me  
9 that that article does not deal with full-tree  
10 harvesting in any way and Kimmins, when he used the  
11 phrase referred to here, was not talking about  
12 full-tree harvesting?

13 A. Yes, indeed he was.

14 Q. I read the report, he was talking  
15 about practices such as clearcut and broadcast  
16 slashing?

17 A. Yes.

18 Q. But he didn't indicate whether he was  
19 talking about clearcutting with full-tree or  
20 clearcutting with bole-only?

21 A. Well, it just happen so, I have seen  
22 some of these area Kimmins is talking about because I  
23 deal with Kimmins frequently, and my understanding was  
24 that many of these sites were indeed full-tree  
25 harvested.

1 Q. Let's go to the article, Mr. Marek,  
2 please.

3 A. Yes. Well, I haven't got it here.

4 Q. In your source book, I'm not sure  
5 which volume.

6 A. Okay.

7 MADAM CHAIR: Is that 1 or 2?

8 MR. CRAIG: Two.

9 MADAM CHAIR: Thank you.

10 THE WITNESS: It's this one here, Madam.

11 MADAM CHAIR: Yes.

12 MR. FREIDIN: Q. And do you see the very  
13 first page which is page 27 of the reported article?

14 A. Yeah, yes.

15 Q. You will find the phrase,  
16 'ubiquitously and uncritically, et cetera, in the last  
17 full paragraph on the right-hand side of the page.

18 A. Yes. Page 32, yeah.

19 Q. You will see that he's talking about  
20 sustained yield and he goes on and he says:

21 "Practices such as clearcutting and  
22 broadcast slash burning--"

23 A. Right.

24 Q. "--which are ecologically sound  
25 management tools on some sites have been

1 applied ubiquitously and uncritically  
2 often with highly undesirable results."

3 Now, I suggest to you, Mr. Marek, that he  
4 did not, in this article he was not commenting on the  
5 use of the full-tree harvesting method at all, he was  
6 talking about clearcutting and broadcast slash burning.

7 A. That's what he says here, yes.

8 Q. You agree that he doesn't even refer  
9 to full-tree harvesting anywhere in this article?

10 A. The debris I have seen was so - just  
11 a second - the debris was so plentiful, sir, that in  
12 some area where it was burned off, indeed lots of slash  
13 has been accumulated along the roads and lots of slash  
14 and big debris. So there was no problem of...

15 Q. That may have been the case, Mr.  
16 Marek, there may have been some full-tree harvesting on  
17 those sites.

18 A. Oh very much so.

19 Q. For the purpose of my questions I  
20 will accept that. What I'm suggesting to you is that  
21 Kimmins did not say that the full-tree harvesting  
22 method had been ubiquitously and uncritically used  
23 often with highly undesirable results?

24 A. That's what he says.

25 Q. He didn't say it though in relation

1 to full-tree harvesting, he just said it in relation to  
2 clearcutting and slash burning?

3 A. He didn't say...

4 Q. He did not say it in relation to  
5 full-tree harvesting?

6 A. That is correct.

7 Q. All right. So I'm just trying to  
8 clarify that the comment here in your witness statement  
9 we should not interpret this as Kimmins saying that  
10 full-tree harvesting had been applied ubiquitously and  
11 uncritically. That's all, I'm just trying to clarify  
12 that.

13 A. Well, your interpretation, sir.

14 Q. All right, thank you. And just one  
15 more question on this matter. On the same page, page  
16 32 of your witness statement in the quote that is at  
17 the top of the page, the three small paragraphs.

18 A. Page 32?

19 Q. Yes, page 32.

20 A. Yes.

21 Q. You say:

22 "On nutritionally poor sites--"

23 A. Yes.

24 Q. "--where the initial site capital is  
25 only marginally above the critical level,

1                   loss of growth may occur in the second or  
2                   third rotation, while on the richer sites  
3                   there may be no obvious effect for four  
4                   or five rotations."

5                   A. That's correct.

6                   Q. If you still have the Kimmins article  
7                   in front of you--

8                   A. Yes, I have.

9                   Q. --would you turn to page 29.

10                  A. That's correct.

11                  Q. And you will note that starting at  
12                  the top of the page he starts talking about losses  
13                  being -- whether they're replaceable and he talks about  
14                  the nutrient recovery period.

15                  A. Yes.

16                  Q. And if we go down to the last -- the  
17                  beginning of the last paragraph on the left-hand side  
18                  of the page it says, in reference to Figure 2:

19                         "The lower part of Figure 2 shows the  
20                         effects of operating a rotation shorter  
21                         than the nutrient recovery rotation."

22                  A. Yes.

23                  Q. See that? And can you confirm for me  
24                  that Kimmins, when he was making his comments about  
25                  loss of growth occurring in the second or third

1 rotation--

2 A. That's right.

3 Q. --was discussing that situation where  
4 the harvests would occur on a rotation shorter than the  
5 nutrient recovery rotation?

6 A. That is correct.

7 Q. Thank you.

8 MR. FREIDIN: Madam Chair, it's past four  
9 o'clock. I've got one more question on this, but it  
10 will wait until tomorrow.

11 MADAM CHAIR: Well, it's a minute to  
12 four, Mr. Freidin.

13 MR. FREIDIN: Oh, it's a minute by my  
14 watch. Ah, well then, let's keep going then.

15 MADAM CHAIR: Is it a very short  
16 question?

17 MR. FREIDIN: Oh, let's try to do it in a  
18 minute.

19 Q. Would you turn to the Foster and  
20 Morrison paper.

21 A. Yes.

22 Q. Actually it's in your source book, in  
23 your source book you have the report which comprise the  
24 workshop on --

25 MADAM CHAIR: You know what, Mr. Freidin,

1 I don't think Mr. Martel and I can go through the  
2 Foster and Morrison paper one more time today. Let's  
3 do it tomorrow morning.

4 MR. FREIDIN: Well, this is a new one.

5 MADAM CHAIR: This is another.

6 MR. FREIDIN: Oh another one, oh yes.  
7 Well, let's leave it for tomorrow that would be a nice  
8 start. Okay.

9 MADAM CHAIR: Thank you very much.

10 MR. MARTEL: I'm not sure what the world  
11 would do without those papers.

12 MADAM CHAIR: Mr. Marek, thank you very  
13 much. We are going to have a procedural discussion,  
14 you are welcome to stay, but if you want to leave,  
15 you're a free man.

16 THE WITNESS: I going to leave, Madam.

17 MADAM CHAIR: Thank you. We will see you  
18 at nine o'clock tomorrow morning.

19 THE WITNESS: Thank you.

20 --- (Witness withdraws)

21 --- Short recess.

22 --- On resuming at 4:05 p.m.

23 MADAM CHAIR: The Board thanks the  
24 parties for coming this evening for the procedural  
25 discussion. The Board requested this session with the

1 parties because we've entered a new phase of the  
2 hearing obviously with the cases of the intervenors,  
3 beginning with Forests for Tomorrow, and the scheduling  
4 of the other cases.

5 As you know, the Board made its ruling  
6 last spring with respect to the deadlines that we  
7 thought we could see coming up with respect to getting  
8 some idea of what the cases of the other parties would  
9 be and how quickly they would be able to follow Forests  
10 for Tomorrow.

11 The Board obviously has a number of  
12 concerns, and the purpose of this meeting is to make  
13 sure, as the hearing continues, that we don't have any  
14 surprises. The Board wants to know now if there are  
15 any obstacles in the way of the intervenors presenting  
16 their evidence, we want to know if they see any  
17 problems coming up, and we want to know months in  
18 advance, we don't want this information a week before  
19 an intervenor's case is scheduled to go ahead.

20 It's our hope that we can plan the  
21 hearing from here on in that the cases follow each  
22 other; if we finish one case on Friday and the other  
23 one is scheduled to begin Monday, that's what we want  
24 to do. We've been able to do that so far with the  
25 proponent and the Industry and Forests for Tomorrow,

1 and we want to keep doing that. We don't want to lose  
2 time because people aren't ready. And if there are  
3 reasons that you know of now that are going to make it  
4 difficult for you to follow the schedule, then tell the  
5 Board and we will get it all out on the table now and  
6 we'll sort it out.

7 Obviously the Board is sympathetic to the  
8 situation of the intervenors, you've been following  
9 this case for a long time now, you've been following  
10 the hearing for two and a half years and we think it  
11 would be a very bad situation if a party made it this  
12 far and then was unable to present their own evidence.  
13 We assume that won't happen, we assume that all the  
14 intervenors who have said they're going to present  
15 their evidence to the Board will do so and they'll be  
16 able to do so.

17 We had a bit of concern because it became  
18 evident that some of the parties weren't going to meet  
19 the November 15th deadline with respect to an outline  
20 of the parties' cases. That situation didn't become  
21 too pressing when we realized that Forests for  
22 Tomorrow's case would extend beyond what we had  
23 originally anticipated, but we don't see that kind of  
24 slippage continuing.

25 I have in hand, and I don't know if the

1 other parties have seen the witness statement provided  
2 by Mr. Don Colbourne for Grand Council Treaty No. 3.  
3 It's entitled witness statement No. 1, but I have a  
4 feeling this might be the entire case. I'm not sure of  
5 that, and we will have to speak to Mr. Colborne, but  
6 he's obviously prepared to go ahead whenever he's  
7 called upon and we are very pleased that he's organized  
8 himself that way and he's submitted this information to  
9 the Board.

10 We also have in hand a letter from Mr.  
11 David Hunter on behalf of NAN and Windigo Tribal  
12 Council -- hello, Ms. Kleer.

13 MS. KLEER: I'm here on behalf of Mr.  
14 Hunter. He just called me and he wanted me to express  
15 to the Board the fact that he would do his utmost to  
16 get here and he was going to have George McKibbin speak  
17 as well, but George is fogged in in Sioux Lookout and  
18 I'm here to answer any questions you have. I have  
19 looked over the matter, and if you have any problems  
20 with it, I would be pleased to speak to it.

21 MADAM CHAIR: Thank you, Ms. Kleer.  
22 Well, we have here this four-page letter from Mr.  
23 Hunter and he outlines what his case will look like,  
24 the fact that he will be having five panels, the  
25 scheduling as he sees it, and some issues raised with

1       respect to translation and a comment about the terms  
2       and conditions process.

3               So again, we think that Mr. Hunter  
4       appears to be well organized and ready to go following  
5       Mr. Colborne, and we don't want to skip a beat with  
6       that presentation, it's the intention that they will  
7       follow in order.

8               And we also have a one-page letter from  
9       NOTOA which simply informs the Board that their case  
10      will consist of four panels and five witnesses and,  
11      again, they are a bit up in the air as to when it will  
12      be their turn to present their evidence, what the exact  
13      scheduling will be.

14              I think there was one -- and we also have  
15      a letter from Katherine Murphy who has recommended that  
16      there be an extension of the current deadlines in  
17      effect for submission of the intervenors' witness  
18      statements, and that's obviously a situation I want  
19      comment this evening from the parties on.

20              And there was one other matter the Board  
21      wanted to remind the parties about and, that is, in  
22      recognition that the proponent has had a great deal of  
23      time and has spent a lot of time presenting its case at  
24      this hearing. The Board is in no way making any kind  
25      of comment about whether we think that was a good or a

1 bad idea, but the Board is concerned about the  
2 psychological impact of that on the intervenors; that  
3 is, we are concerned that the intervenors believe that  
4 in order to address the issues that the proponent has  
5 raised that they too should take a long time.

6 The Board has no -- we don't believe in  
7 any sense that the longer a party takes in presenting  
8 its evidence the stronger the case it's making. We  
9 want the intervenors to understand that they don't have  
10 to lead two years of evidence to provide effective  
11 evidence before the Board or to convince the Board of  
12 their point of view or whatever their objective is in  
13 their case. The Board wants it to be perfectly clear  
14 that we're not measuring the effectiveness of a party's  
15 case by how long it takes to present their evidence.  
16 And no party should be working under the understanding  
17 that if I take a very long time to present evidence or  
18 a very long time to cross-examine, that I am more  
19 effective.

20 That just doesn't wash with the Board.  
21 We are not impressed by the amount of time it takes  
22 people to make their submissions to us. We are  
23 impressed with the quality of that evidence, and so we  
24 want to reassure the intervenors that in no way should  
25 they feel they must extend the presentation of their

1 evidence.

2 I would like to call on some of the  
3 parties now. I think, Mr. Hanna, we are going to start  
4 with you because we have gone through -- we have  
5 received information from other intervenors, and I  
6 would like to hear from you with respect to the  
7 organization of your case and whether you have any  
8 recommendations to make with respect to a deadline for  
9 the intervenors following Forests for Tomorrow to have  
10 an outline of their case submitted to the Board.

11 MR. HANNA: Thank you, Madam Chair. As I  
12 understand it, the Board has asked five issues to be  
13 addressed in the procedural directive that was sent out  
14 on November 8th, 1990 and if it pleases the Board I'll  
15 deal with each one of those in sequence.

16 MADAM CHAIR: That's fine, Mr. Hanna.

17 MR. HANNA: The first issue is regarding  
18 a brief outline of the issues to be presented in the  
19 OFAH case and I'll provide that to you now.

20 The OFAH is anticipating at this time  
21 having 10 witness panels, and I will explain each one  
22 of those to you now. The first panel is entitled The  
23 Overview of the OFAH and Involvement in Resource  
24 Planning Issues, and that will involve a detailed  
25 description of the involvement of OFAH members in terms

1 of timber management planning and other resource  
2 management planning issues in the province. The  
3 primary focus of that evidence will be to provide  
4 evidence to the Board that there are committed citizens  
5 in this province who are willing, able and committed to  
6 having intimate involvement in the timber management  
7 planning process and the types of public involvement  
8 proposals the Federation is putting forward are  
9 workable and practical.

10 The second panel will be entitled The  
11 Ontario Federation of Anglers & Hunters, Proposed  
12 Timber Management Planning System. That panel will  
13 outline in detail the timber management planning  
14 process that the Federation is proposing as a superior  
15 alternative to the application put forward by the  
16 proponent and will describe how that planning process  
17 can be implemented and interfaced with the existing  
18 system in an orderly and efficient way.

19 Panel 3 will deal with timber management  
20 planning systems in other jurisdictions. The purpose  
21 of that panel will be to provide evidence to the Board  
22 that the types of proposals set out in Panel 2 in fact  
23 are proven, have been used in other jurisdictions, have  
24 been used successfully in other jurisdictions to deal  
25 with many of the problems that the Board is only too

1       aware of that face us all in timber management  
2       planning.

3               The fourth panel is entitled Implementing  
4       Adaptive Management. The focus of that panel will be  
5       to explain to the Board the mind set changes that are  
6       necessary within the proponent in order to implement  
7       adaptive management and also the practical changes in  
8       the way that we collect and manage data to implement  
9       what, in our view, is the only meaningful way to move  
10      forward at this time in terms of timber management  
11      planning in the province.

12             Panel 5 is entitled Biodiversity/Featured  
13      Species. The purpose of that panel will be to explore  
14      the featured species approach that the Ministry of  
15      Natural Resources have brought forward, to attempt  
16      to -- not to attempt, but in fact to address the  
17      weaknesses that the Ministry has identified in the  
18      featured species approach, particularly dealing with  
19      biodiversity and other species that aren't featured.

20             Panel 6 will deal with habitat supply  
21      analysis, and I don't think I need to say more about  
22      that, I think the Board has some understanding of that  
23      issue.

24             Panel 7 will deal with socio-economic  
25      impact analysis. The purpose of that panel will be to

1 set out for the Board the types of analytical tools  
2 that are available to resource managers in order to  
3 deal with social and economic impact in a consistent  
4 and fair way and in a traceable way that members of the  
5 public can understand and relate to and can provide  
6 meaningful input and comment on.

7 Panel 8 will deal with access planning.  
8 The focus of the access planning panel at this time  
9 will be to look at practical alternatives to  
10 undertaking comprehensive access planning as part of  
11 the timber management planning process dealing with  
12 those elements in our terms and conditions that call  
13 for, for example, long-range access planning for timber  
14 management or forest management units and how that  
15 should be integrated with the other resource concerns  
16 that are associated with access planning in addition to  
17 timber.

18 Panel 9 is entitled the Social  
19 Environment In Which Timber Management Takes Place.  
20 The purpose of this panel will be to respond to a  
21 request by the Board that if we wish to introduce the  
22 survey undertaken by the Canadian Forestry Service of  
23 public concerns in relation to timber management  
24 planning within Canada and specifically within Ontario,  
25 that we had to present that evidence, and this panel

1 will speak to that matter.

2                   The last panel is Panel 10, and that will  
3 deal with environmental planning issues. There's a  
4 number of environmental planning issues that have  
5 arisen through the OFAH cross-examination dealing with  
6 matters such as what a Class EA should constitute, what  
7 is the role of impact prediction, and how does that  
8 accord with the use of guidelines and the timber  
9 management planning process brought forward by the  
10 Ministry, and a variety of related issues that go to  
11 the very heart of what this application means from an  
12 environmental planning point of view.

13                  Those are the panels, Madam Chair, at  
14 this time that the Federation anticipates calling. I  
15 would indicate to you that the evidence that they will  
16 bring forward will be directly in support of the terms  
17 and conditions that the Federation has submitted and  
18 the revised terms and conditions that the Federation  
19 will be submitting at the end of this month.

20                  I think those terms and conditions set  
21 out very clearly where the Federation wishes to go in  
22 terms of timber management planning in this province,  
23 and it is my intent that the evidence that I will be  
24 calling will be along those lines.

25                  That deals with the first issue, Madam

1 Chair.

2 In terms of the number of witnesses we  
3 intend to call to deal with these issues, I would say  
4 at this point that is tentative, but I will give you my  
5 best estimate, if I can. I will just go down from 1 to  
6 10 and provide you with the estimate I have at this  
7 time.

8 Panel 1 will likely be 4 witnesses; Panel  
9 2, 3; Panel 3, 3; Panel 4, 3; Panel 5, 4; Panel 6, 3;  
10 Panel 7, 3; Panel 8, 4; Panel 9, 3 and Panel 10, 3.

11 MADAM CHAIR: Are some of these witnesses  
12 the same people, Mr. Hanna?

13 MR. HANNA: One witness will be repeated  
14 perhaps in two or three panels.

15 MADAM CHAIR: Are some of these witnesses  
16 you?

17 MR. HANNA: No, Madam Chair.

18 Now, the third matter that you had asked  
19 us to respond to was the arrangements for efficiently  
20 leading examination-in-chief. I have expanded that  
21 somewhat in responding to you because I think that will  
22 assist you in trying to address some of the issues you  
23 made in your opening statement, I think you indicated  
24 in your procedural directives.

25 You've indicated that you want no

1 surprises and you want sufficient notice of what the  
2 evidence will be so that there can be orderly  
3 presentation of the evidence. I agree with you and I  
4 think the Federation has throughout this hearing  
5 attempted to abide by that objective also.

6 In order to do that, I think there are  
7 certain things that the Board should take into  
8 consideration. First of all, I have to say to you at  
9 this time that it is highly questionable whether or not  
10 the panels that I have indicated to you will in fact  
11 ever be presented to you. There had been a decision  
12 made at the Federation that our involvement in the  
13 hearing was coming to an end. That was not a decision  
14 that was easily reached, it was a decision that came  
15 very hard, and there is still a grave concern that may  
16 in fact come out to be true.

17 You have indicated in the procedural  
18 directive that the Board is receptive to submissions  
19 for subsequent intervenor funding, and I will come to  
20 that, but I raise that at the very beginning because I  
21 think that is important for you to understand in terms  
22 of the orderly presentation and carrying out of this  
23 case.

24 The matter remains that for us to  
25 continue, intervenor funding is essential, and

1 presuming that that intervenor funding becomes  
2 available, and that unlike in the past the Federation  
3 is awarded a significant amount of funds in order to  
4 carry out its participation in the case, then we expect  
5 that that would likely occur at the earliest by the  
6 middle of February, I can't imagine the process working  
7 faster than that; if it can, so much the better, but  
8 right now, for scheduling purposes, we are anticipating  
9 that would be the earliest that we could anticipate  
10 that type of a decision.

11 If that is the case, the Federation would  
12 at that point give the go ahead to the experts that it  
13 has contacted and made commitments to in terms of -- or  
14 it has received commitments from in terms of appearing  
15 on their behalf, to finalize their evidence.

16 As I'm sure you can appreciate, the  
17 Federation is not at this point going to commit to  
18 those witnesses to undertake further efforts and  
19 expense to the Federation if the Federation does not  
20 have the resources to carry it through to the final  
21 end, and so that the timing of our witness statements  
22 is very much contingent on the outcome of any  
23 intervenor application -- funding application that  
24 might be made and what decision is ultimately rendered  
25 on that.

1 I would like to continue on the  
2 presumption that sufficient intervenor funding is made  
3 available and the Federation is successful in their  
4 application and, in the event that that does occur, it  
5 occurs in the middle of February. If it does occur in  
6 the middle of February, we will require at a minimum  
7 two and a half months to prepare our witness  
8 statements, or at least to prepare the first witness  
9 statement to be submitted and the others to be prepared  
10 somewhat concurrently, but certainly within two and a  
11 half months at the earliest we could have the witness  
12 statements ready.

13 Now, I have considered that in terms of  
14 the schedule of the hearing and the potential  
15 implications that might have in terms of the Board,  
16 both in terms of surprises and the orderly presentation  
17 of evidence, and I view that does not in any way  
18 jeopardize the Board's wishes with respect to the  
19 orderly presentation and efficient conduct of the  
20 hearing.

21 It has been my intent from the outset at  
22 this hearing, and it has been my advice to my client,  
23 that I would like to have as much of our evidence in  
24 written form as possible, and I would do everything in  
25 my power to make our evidence-in-chief as succinct and

1 short as possible, in fact I would go so far as to say  
2 with some witness statements that the evidence-in-chief  
3 may not even be necessary.

4 I have experience with preparing witness  
5 statements that are basically in a question and answer  
6 type format, I know that much more learned agents and  
7 advocates than myself feel that there is some advantage  
8 in oral evidence and evidence-in-chief, but I'm by the  
9 same token somewhat compelled to think that if there's  
10 something important it will come out in  
11 cross-examination, the written word is there, and  
12 that's a reasonable basis to stand by.

13 The important thing, however, is that in  
14 order for those witness statements to be prepared in  
15 the most effective way, it is essential for the  
16 Federation to have a sound understanding of the  
17 evidence that has been submitted by the other panels,  
18 and that evidence includes both the written evidence  
19 and the oral evidence.

20 Now, obviously there's a practical  
21 limitation in this if we're going to go through the  
22 interrogatory process, the statement of issues and  
23 scoping sessions and all of the different procedural  
24 directions that the Board has said out, but I think  
25 there's a benefit to it on the other side, and the

1 benefit is this: As an example, as a result of the  
2 evidence that we have heard from Forests for Tomorrow,  
3 there are certain issues that I will be able to much  
4 more focus our evidence on as a result of the evidence  
5 that they have presented. I wouldn't have been able to  
6 do that if I hadn't heard their evidence, hadn't had  
7 the chance to cross-examine their witnesses and  
8 understood clearly the areas that they're addressing,  
9 the areas they aren't addressing.

10 That I expect would be the case also with  
11 respect to NAN's case, perhaps to a lesser extent now  
12 that we have Treaty 3's statement ahead, statement  
13 submitted, and the Metis Association.

14 My expectation is that we will be able to  
15 provide much more useful and focused witness statements  
16 to the Board the longer that we have to be able to  
17 assimilate the evidence and to focus and target our  
18 evidence so that there's no duplication or  
19 repetitiveness in the evidence that we bring forward.

20 The other point that I would note there  
21 is simply a matter in terms of the fairness of the  
22 process and, that is, I'm quite concerned about having  
23 to submit all of our witness statements at one time,  
24 and I realize that you can set a deadline and say:  
25 Well, you can always start submitting witness

1 statements before the deadline.

2 My experience has been with deadlines  
3 that that isn't the way they work, and certainly I  
4 think with the resources that the Federation has  
5 available to us that to submit all the witness  
6 statements on one day would be not appropriate and, in  
7 fact, when I look at the letter that Mr. Hunter has  
8 submitted, I think he's set out what I think is a  
9 reasonable type of schedule where the witness  
10 statements are submitted in some sort of reasonable  
11 sequence and that there's a reasonable sequence in  
12 terms of interrogatories and responses to  
13 interrogatories, and I don't see any reason for that to  
14 lead to inefficiency or potential surprises in the  
15 evidence as far as the Board is concerned.

16 MADAM CHAIR: The Board has never -- we  
17 have always been in support of a staggered distribution  
18 of witness statements to match the interrogatory  
19 process.

20 MR. HANNA: Fine. I would like to just  
21 comment, before I go to the next point, and that was  
22 your statement about the extent of the evidence to be  
23 called and the point of being cautious about using the  
24 Ministry's -- the proponent's case as a benchmark. I  
25 concur wholeheartedly and it certainly wasn't the

1 benchmark against which I was working.

2           The benchmark against which I'm working  
3 is to try and present to you in the most concise and  
4 orderly way our evidence-in-chief and hopefully by  
5 doing that, and providing as much of that information  
6 ahead of time, that cross-examination can be very short  
7 and very focused, and I will do everything -- presuming  
8 that I'm here and that the Federation continues in the  
9 future, I will do everything in my power to ensure as  
10 much of the information, as much as of the evidence  
11 that the Federation brings forward is brought forward  
12 before the witness appears so that all parties can  
13 properly prepare and can fully understand the position  
14 of the witness and prepare accordingly in terms of  
15 cross-examination.

16           The second last point that I would deal  
17 with, and that is the negotiation process for terms and  
18 conditions. The OFAH is in support of the negotiation  
19 process, we were actively involved in the first  
20 negotiation process, we did everything in our powers to  
21 make that process an effective and reasonable exercise.  
22 There were some positive elements to that and, as a  
23 result, that's why we support it further. But we do  
24 have some reservations, and the reservations are this:  
25 Our experience as a result of the last negotiation

1 process was that it was not a negotiation process in  
2 the way that I have experienced negotiation process, it  
3 was more an exercise in discovery, if nothing else,  
4 that the parties were there to explain their terms and  
5 conditions, but no one was there - or I shouldn't say  
6 no one - I said the Federation was there and ready to  
7 make decisions to -- we were given executive power by  
8 the Federation to make decisions at the negotiation  
9 process. It was our expectation that we would sit  
10 around the table and make decisions; unfortunately,  
11 that wasn't the case.

12 We are prepared to continue the  
13 negotiation process if the parties are willing to come  
14 to the table and to make decisions, not to come to the  
15 table and talk. We do feel that that can lead to  
16 efficiencies in the hearing.

17 We think that the submission of draft  
18 terms and conditions has led to efficiencies - I think  
19 it could have led to more efficiencies - but I think it  
20 has.

21 I've certainly done everything in my  
22 power in my cross-examination to keep my  
23 cross-examination focused directly on our terms and  
24 conditions or the terms and conditions of the party  
25 that is cross-examining, and I see that if we can

1 further refine those areas in dispute and put aside  
2 those areas in which there is common understanding,  
3 that that's another way that efficiencies can be  
4 achieved in the hearing.

5 The last issue I would deal with, Madam  
6 Chair, is that of intervenor funding. I think I've  
7 said to you that the Federation is on its last legs and  
8 I say that not easily. The Federation has made a  
9 commitment to this hearing, greater I think than any  
10 other public interest group in terms of their own  
11 personal finances.

12 We see this as being perhaps one of the  
13 most central issues to the whole raison d'etre for the  
14 Federation, but by the same token the practical  
15 realities you cannot escape, and the practical  
16 realities are hard upon us at the present time.

17 We would fully support the Board in any  
18 actions that it could take in order to secure  
19 intervenor funding, we would support the Board in its  
20 securing of those funds as soon as possible, and in the  
21 event that those funds do become available by the  
22 government, the Federation intends to submit an  
23 application for intervenor funding, the extent and  
24 nature of that application has yet to be determined,  
25 but I think that the previous submissions by the

1 Federation, particularly the last intervenor funding  
2 hearing, is indicative of the level of effort that is  
3 required, at least in terms of evidence for the  
4 Federation to complete its case.

5 Those are my submissions, Madam Chair.

6 MADAM CHAIR: Thank you, Mr. Hanna.

7 With respect to intervenor funding,  
8 obviously this hearing panel has no control over that,  
9 we weren't given that authority. I think it's obvious  
10 to the parties that if we were under the Intervenor  
11 Funding Act that this Board would do what it thought  
12 should be done to move this hearing along with respect  
13 to supplementary intervenor funding. We just don't  
14 have that authority, we can't do anything about it.

15 At the same time we raise this issue  
16 because we wanted to bring it out in the open, we  
17 wanted to hear from yourself or any other parties who  
18 believe they are being impeded in presenting their  
19 evidence to the Board, and perhaps there are already  
20 discussions going on between the parties - we are not  
21 privy very to that, we have no idea what is going on -  
22 but we certainly wanted to hear from the parties as to  
23 what state they are in with respect to their resources,  
24 and we will be referring the transcripts of this  
25 session on to the Timber Management Hearing Panel. And

1       that's as far as we can take it, although we can  
2       certainly make recommendations if we think that the  
3       parties have very clear concerns about the state of  
4       their finances and whether they can afford continued  
5       participation in the hearing.

6               MR. HANNA: Thank you, Madam Chair.

7               MR. CAMPBELL: Madam Chair, I take it  
8       when you say you will be referring it to the Timber  
9       Management Hearing Panel, you mean the Funding Panel?

10              MADAM CHAIR: The Funding Panel, pardon  
11      me, who is Mary Munro at this point and I assume that  
12      she will continue to be that.

13              MR. CAMPBELL: I just thought it was  
14      worth mentioning.

15              MADAM CHAIR: Thank you.

16              Ms. Kleer, perhaps with respect to  
17      scheduling - and I know this is a bit awkward for you -  
18      but could you tell us how long Mr. Hunter is estimating  
19      his evidence will take to present before the Board?

20              Well, he's got the times, one to two days  
21      seems to be his estimate for most of his five panels.  
22      Do you know if he has had any discussion with the other  
23      parties with respect to how long he would estimate his  
24      witnesses would be in cross-examination?

25              MS. KLEER: I spoke with him briefly

1 about this matter today, unfortunately he didn't  
2 mention anything about how long he expected the  
3 cross-examination to take. I suspect if I did speak  
4 with him about it he would say--

5 MADAM CHAIR: He doesn't know.

6 MS. KLEER: --he just doesn't know. It  
7 would depend a lot upon what interrogatories we have.

8 MADAM CHAIR: So if things went according  
9 to his plan with examination-in-chief that would be  
10 about 10 days?

11 MS. KLEER: 13.

12 MADAM CHAIR: 13, yes, there was one  
13 panel that was slightly longer. And is Mr. Hunter  
14 planning to conduct this part of the hearing in Sioux  
15 Lookout?

16 MS. KLEER: To the best of my knowledge  
17 that's what they have planned for, and there hasn't  
18 been any change in that.

19 MADAM CHAIR: All right. And Mr.  
20 Hunter's case will follow Mr. Colborne, that is what  
21 you had talked about before?

22 MS. KLEER: Yes, we had agreed to that.

23 MADAM CHAIR: All right. And with  
24 respect to the Windigo Tribal --

25 MS. KLEER: Pardon me, pardon me. I'm

1       sorry. As far as I knew, up until my time of leaving  
2       in the middle of October, that's what we had agreed,  
3       however --

4               MADAM CHAIR: Mr. Williams.

5               MR. REID: I'm Reid, Mr. Reid for OMAA.

6               MADAM CHAIR: Mr. Reid, I'm sorry.

7               MR. REID: My understanding was that we  
8       would follow Treaty 3 and then NAN would go after us,  
9       but...

10              MADAM CHAIR: Well, that's a decision  
11       that you are free to make. The Board was simply  
12       wondering for scheduling. So you would plan now to  
13       follow Mr. Colbourne, and is your understanding that  
14       Mr. Colborne will take two weeks or has he --

15              MR. REID: I met with Mr. Colborne last  
16       week and he was not sure then. I thought though -- we  
17       had talked about our case and he said that he thought  
18       his would take as long as six to eight days for  
19       examination-in-chief.

20              MADAM CHAIR: And that's what you feel  
21       your evidence will take to get before the Board too.

22              MS. KLEER: So then we will follow  
23       upon --

24              MADAM CHAIR: You will be last then.

25              MS. KLEER: That's fine.

1                   MADAM CHAIR: Okay. And with respect to  
2 the Windigo Tribal Council, will they have a separate  
3 submission or will it be --

4                   MS. KLEER: This will all be heard  
5 together and it will all be heard in Sioux Lookout.

6                   MADAM CHAIR: In Sioux Lookout.

7                   MS. KLEER: Now, there was a discussion,  
8 and I think it should be on record, there was a  
9 discussion with Nishnawbe-Aski Nation about having  
10 their case heard in Thunder Bay.

11                   My understanding is that they have  
12 decided to hold it all in Sioux Lookout, but what I can  
13 do is to speak to Mr. Hunter and seek clarification on  
14 that just to be sure.

15                   MADAM CHAIR: All right, thank you.

16                   And one more matter, and I'm sorry to  
17 burden you with these questions, but could you tell the  
18 Board, are there any plans in place for translation  
19 services? I think we asked NAN to identify persons in  
20 the community or wherever who would serve as  
21 translators.

22                   MS. KLEER: The way -- I spoke with  
23 George McKibbin briefly about that matter this  
24 afternoon and he indicated that the way they saw their  
25 case being presented and having translators would be

1       that they would provide; namely, NAN would provide the  
2       translators.

3                   MADAM CHAIR: All right.

4                   MS. KLEER: And just to further clarify  
5       that, in terms of regular court proceedings, they do  
6       not do simultaneous translation; the question is asked  
7       in English, it's translated, the answer comes back in  
8       the native language, and then it's retranslated back  
9       between them.

10                  MADAM CHAIR: Would the presentation in  
11       Oji/Cree, would that occur through the five panels of  
12       evidence, or would it be only in Panel 4? Well, no --

13                  MS. KLEER: To be truthful --

14                  MADAM CHAIR: It looks like it's three  
15       out of the five panels. All right.

16                  MS. KLEER: Whenever there would be a  
17       witness that speaks the native language, and it looks  
18       like Panel 2, 3 and 4, as you say, we are aware that  
19       translation would be required.

20                  MADAM CHAIR: And Mr. Hunter has  
21       calculated perhaps a longer time for that exercise in  
22       his estimates of examination-in-chief?

23                  MS. KLEER: Yes.

24                  MADAM CHAIR: Well, I'm not going to  
25       count up all the days here and make guesses, but

1 certainly we are looking at three or four months to  
2 hear the evidence of Grand Treaty No. 3, OMAA and NAN.  
3 Perhaps we will hear from Mr. Reid with respect to the  
4 state of preparation of your client's case.

5 MR. REID: We're prepared, Madam Chair,  
6 actually to work within the current time frames that we  
7 have, is that we could have all of our witness  
8 statements filed by December 30th. We prefer four to  
9 six weeks more, and the reason we feel research is part  
10 of one of the witness statements -- we prefer four to  
11 six weeks more, that would be until the middle of  
12 February, to finish filing our witness statements.  
13 We're planning four witness statements -- preparing  
14 four witness statements.

15 The first one is an overview of OMAA and  
16 its constituents. The evidence-in-chief would be given  
17 by two witnesses. We estimate one to one and a half  
18 days for that evidence-in-chief.

19 The second witness statement is a profile  
20 of the aboriginal peoples of the Beardmore and  
21 Macdiarmid area around Lake Nipigon. That will be  
22 three or four witnesses and evidence-in-chief will be  
23 three to four days. Those witnesses intend to describe  
24 their community and the relationships between  
25 themselves and their traditional lifestyles and the

1 timber harvesting practices that have been used in  
2 their area up to now.

3 The third witness statement will be on  
4 the aboriginal and treaty rights of OMAA's peoples.  
5 One witness, one to one and a half days.

6 And the fourth and final witness  
7 statement would be on alternative planning processes,  
8 those that have been proposed by OMAA and alternatives  
9 that have been used in other jurisdictions, and we  
10 expect two witnesses for that section and one day -- we  
11 estimate one to one and a half days. So the total time  
12 we are estimating is between six and eight and a half  
13 days for our direct.

14 We expect to present in Thunder Bay. It  
15 is our understanding that we would follow Grand Council  
16 Treaty No. 3. We're prepared to follow NAN, if they  
17 want to go ahead of us, that's fine.

18 We don't require translation but our  
19 people have said that they would like to have a video  
20 camera in the room to videotape the evidence of all of  
21 OMAA's witnesses. Many of OMAA's constituents are  
22 unable to read or write in any language and we would  
23 find a videotape the best way of translating the  
24 materials.

25 The only other - I don't know if this is

1 a scheduling matter - the only other I guess special  
2 concern of some of our witnesses, and that's the three  
3 or four from the Beardmore Macdiarmid area, because  
4 they have suggested that they like to begin each day of  
5 their evidence with a brief traditional ceremony, Sweet  
6 Grass Ceremony.

7 They have some reservations as well  
8 simply about the layout of the room, and I frankly  
9 haven't given that much thought yet as to what to  
10 propose. The room looks like a courtroom, which is  
11 somewhat intimidating to a lot of people, and they have  
12 said they are going to give some thought as to what  
13 they would like to propose and whether we are able to  
14 do that or not, I guess we will see, but I don't think  
15 that will affect scheduling.

16 MADAM CHAIR: All right. Thank you, Mr.  
17 Reid. With respect to intervenor funding matters, will  
18 you be discussing or will you be approaching the  
19 funding panel or does that figure into your...

20 MR. REID: It may for our case simply be  
21 a matter of transferring some money out that's  
22 presently allocated to legal fees and disbursements to  
23 expert witness fees and disbursements.

24 If we have problems, that's probably  
25 where it's going to be, is funding for expert

1 witnesses, but we haven't made a decision as to whether  
2 we will approach the funding panel for more money or  
3 for the allocation.

4 MADAM CHAIR: Thank you. And, again, the  
5 Board is not encouraging parties to apply for more  
6 intervenor funding, we simply want to be aware of what  
7 the situation is and not to find out down the road that  
8 there was a problem that could have been right out in  
9 the open.

10 Mr. Hanna, did you give the Board --  
11 would you give the Board -- when you were talking about  
12 deadlines, did you give the Board a deadline that you  
13 thought would be fair for the submission of outlines of  
14 the intervenors' witness statements?

15 We had asked last week that November 15th  
16 be a deadline with respect to all the intervenors  
17 providing us with an outline of what their case would  
18 be. You have just done that in one sense orally.

19 Are you suggesting that the next  
20 deadline -- and if you were to follow Treaty 3, OMAA  
21 and NAN, are you suggesting that the next deadline that  
22 OFAH would see would be a deadline for beginning the  
23 submission of its first witness statement, and then the  
24 other nine would be staggered after that? And I know  
25 that there are all kinds of complications here about

1       when you would be able to begin that work, but if  
2       Forests for Tomorrow's case is completed by--

3               MR. LINDGREN:   March.

4               MADAM CHAIR:   --by the end of March, Mr.  
5       Lindgren?

6               MR. LINDGREN:   I believe that's the  
7       current anticipation.

8               MADAM CHAIR:   That's the current  
9       schedule, and April, May, June and August we spend up  
10      north, that would suggest that we would be ready for  
11      you in September?

12              Now, there are some other things that we  
13      have to do, we have been requested by the group in Red  
14      Lake --

15              MR. HANNA:   Single-Industry Towns.

16              MADAM CHAIR:   That's it, Single-Industry  
17      Towns, who want us to come to Red Lake and they would  
18      expect to be one or two weeks, and they have requested  
19      specifically that we come sometime in May. We will  
20      have to look at that, but there are some other parties  
21      who will be taking bits of time, but there aren't very  
22      large amounts of time that would be taken up.

23              And so if we stuck to some sort of a  
24      schedule, you might be prepared to begin your case in  
25      September?

1                   MR. HANNA: I don't see any problem with  
2                   that at all, Madam Chair, and in fact I see no problem  
3                   in having all of our witness statements submitted  
4                   certainly before the case begins. I see no problem in  
5                   that, with all of the other...

6                   MS. CRONK: That's very comforting, Mr.  
7                   Hanna.

8                   MR. HANNA: With all the other cases  
9                   before you.

10                  MADAM CHAIR: I see what you're saying.  
11                  Now, what I would like the parties to do perhaps then  
12                  is discuss with Forests for Tomorrow the experience  
13                  they've had with the interrogatory process.

14                  I can't say that the interrogatory  
15                  process has held up the presentation of their evidence,  
16                  but certainly I think it's been a bit overwhelming and  
17                  you might be able to benefit from their advice with  
18                  respect to how they have handled that.

19                  MR. HANNA: Madam Chair, if I could just  
20                  make a comment on that. I would encourage the parties  
21                  to submit the most extensive and detailed  
22                  interrogatories as possible.

23                  I can tell you that from my perspective I  
24                  would do everything I can to deal with as many issues  
25                  outside of this hearing room as possible. If we can

1 deal with it through interrogatories, so much the  
2 better, and I understand the difficulties that  
3 involves, but by the same token I would be prepared to  
4 undertake that burden, that increased burden outside of  
5 the hearing room for the efficiency of the hearing and  
6 for the efficiency of communication between all panels.

7 MADAM CHAIR: That may be your position,  
8 Mr. Hanna, I don't know what the position will be of  
9 the other groups, but I would simply alert them to what  
10 the Board has observed with respect to that process and  
11 I think a lot of planning has to go into and certainly  
12 I'm sure Forests for Tomorrow would share their  
13 experience and wisdom, as would OFIA and MNR with  
14 respect to preparing for that kind of a workload.

15 Did any of the other parties want to say  
16 anything about the scheduling matters? Even though you  
17 may have given your evidence, you may have some  
18 enlightening observation to make about the whole thing.

19 MR. CASSIDY: My comments are more in the  
20 line of questions of some of the other parties, things  
21 that come to mind, I hope my questions will be of  
22 assistance to the Board.

23 First of all, with respect however to the  
24 issue of intervenor funding, I was under the  
25 impression, as you have indicated, that this Board does

1 not have the jurisdiction to deal with that and, as a  
2 result, have not sought specific instructions from my  
3 client with respect to intervenor funding; however, as  
4 you have indicated, you intend to refer this transcript  
5 on to the appropriate panel dealing with that.

6 I would like it simply notes for the  
7 record that that issue with respect to intervenor  
8 funding may arise with respect to people who are not in  
9 this room and indeed may arise with respect to one of  
10 my clients, and I would like that noted simply for the  
11 record, putting that on the transcript for that panel,  
12 I'm not making any position now with respect to that at  
13 this time, however.

14 MADAM CHAIR: Thank you, Mr. Cassidy.

15 MR. CASSIDY: The other comments I have  
16 are in the nature of questions with respect to some of  
17 the correspondence I have received, some of which  
18 you've referred to, but I wonder if I might commence by  
19 asking Mr. Hanna if he can give us an indication of his  
20 overall estimate of time frame for the presentation of  
21 his evidence, operating on the assumption that he would  
22 present those some 10 panels.

23 His overview has been very helpful, but I  
24 don't think I've heard an estimation of the amount of  
25 time he thinks that might take.

1                   MR. HANNA: Madam Chair, I will answer  
2                   that to the best of my ability given the current state  
3                   of affairs that we are in.

4                   My intent is to have the evidence, the  
5                   oral evidence-in-chief be no greater than a day for any  
6                   of the panels, that's my intent, and I say that because  
7                   I would like as much as possible to have as much of the  
8                   evidence in written form.

9                   Obviously, it will be somewhat determined  
10                  by the amount of time that I can extract out of the  
11                  witnesses to do that, because obviously it takes much  
12                  more time up for the witness to prepare that type of  
13                  extensive statement, but that would be my intent to do  
14                  that in the most comprehensive way as possible. And  
15                  that's my best estimate at this time.

16                  MADAM CHAIR: Thank you, Mr. Hanna.

17                  MR. CASSIDY: Madam Chair, with respect  
18                  to that issue of length of time, I simply note for the  
19                  record that I believe over the course of the hearing it  
20                  has been developed, as a matter of convention if you  
21                  will, that both Forests for Tomorrow and ourselves and  
22                  I believe MNR were endeavouring to operate under an  
23                  informal rule that there be no more than two days taken  
24                  in evidence-in-chief.

25                  I note that with respect to Mr. Hunter's

1 submissions in his letter and also with respect to Mr.  
2 Reid's comments today that it is contemplated some of  
3 the panels would exceed that, and I trust that those  
4 parties will operate under the convention that we were  
5 restricted to, as well as Forests for Tomorrow and MNR  
6 in an attempt to move this hearing along.

7 My colleague, Ms. Cronk, advises me that  
8 in fact was a Board order. If that's the case, I would  
9 expect the parties affected here to in fact apply for  
10 an extension beyond that time if they feel it  
11 necessary, because otherwise, there is a Board order  
12 requiring that there be a two-day limit.

13 MADAM CHAIR: Thank you, Mr. Cassidy. I  
14 think that certainly Mr. Hunter's estimates the Board  
15 would consider to be a request for leave to take longer  
16 than two days, and he's only asking for that in one  
17 situation, but certainly during a scoping session we  
18 would explore with him how long he was taking.

19 MR. CASSIDY: Thank you, Madam Chair. I  
20 anticipated it would be raised in a scoping session.

21 If I might then move on, with respect to  
22 Mr. Colbourne's filing today or serving on me today of  
23 his witness statement --

24 MADAM CHAIR: Do you know if this is his  
25 whole case, Mr. Cassidy?

1                   MR. CASSIDY: I don't know any more than  
2           the fact that I received this witness statement today  
3           and the fact that his letter says it's their first one.  
4           I have no further information. I would be appreciative  
5           if Mr. Colbourne could be directed or instructed by the  
6           Board to give us an indication of an overall outline,  
7           because one thing immediately comes to mind is: What  
8           do we do by way of interrogatories with respect to this  
9           panel and with respect to future panels?

10                   I'm operating on the assumption that  
11           there is the normal Board rules applying with respect  
12           to this interrogatory and that we would have to file  
13           our interrogatories I believe within 40 days of today's  
14           date, and he would have I believe 10 days. However, I  
15           would ask for the Board's direction on that, but in  
16           addition, if he intends to serve other witness  
17           statements, you know that rule kicks in if they serve  
18           it within a 10-day period, to extend the period of  
19           time.

20                   So we are going to need some direction  
21           from Mr. Colborne as to whether or not this is it, or  
22           whether there's more. And I would respectfully request  
23           that the Board request Mr. Colborne to so indicate to  
24           the Board and to the parties what his intentions are in  
25           that regard.

1                   MADAM CHAIR: We will be getting in touch  
2 with Mr. Colbourne very soon, Mr. Cassidy.

3                   Although it might be helpful, you have  
4 had some experience with this process of scheduling  
5 interrogatories and the time limits and that sort of  
6 thing, it would be helpful to the Board perhaps if you  
7 spoke to Mr. Colbourne as well. I'm sure he knows that  
8 we've got to set up a schedule.

9                   It's not clear to me whether this was  
10 submitted in order to comply with the November 15th  
11 deadline and if indeed it is the formal start of the  
12 case, I don't know that. So we will sort that out very  
13 quickly.

14                  MR. CASSIDY: If you're asking me to  
15 undertake to do that, I'm certainly prepared to contact  
16 Mr. Colborne and advise the Board accordingly, Madam  
17 Chair.

18                  MADAM CHAIR: I think it would be helpful  
19 for Mr. Colborne instead of having to go through  
20 procedural rulings and so forth that he just be  
21 reminded quickly of what the timing is for people  
22 posing interrogatories and having them answered.

23                  MR. CASSIDY: Then I will send -- I will  
24 correspond with him and advise him that we are  
25 operating under that assumption and we will proceed in

1       that fashion. But I would also propose that I would  
2       speak to him and ask him to provide us with an outline  
3       of the remainder of the evidence.

4               MADAM CHAIR: Mr. Pascoe will speak to  
5       him about the outline of the evidence.

6               MR. CASSIDY: All right.

7               MADAM CHAIR: And when we receive it from  
8       Mr. Colborne, we will circulate it to the parties.

9               MR. CASSIDY: Thank you.

10              With respect to the issue of  
11       interrogatories, I want to move then to Mr. Hunter's  
12       letter, and I have a few comments in respect of the  
13       proposal that he sets for his evidence and, that is, on  
14       page 2 of his letter, which I trust you have in front  
15       of you, he sets out a proposed schedule whereby there  
16       are 30 days to prepare interrogatories and respond.

17              As I've indicated in my comments the  
18       normal rule is 40, and I don't see any reason to depart  
19       from that rule in the context of this evidence, since  
20       they will be, in the presentation of those, being the  
21       third native party to present evidence, there isn't  
22       going to be any reason to restrict the time frames in my  
23       respectful submission and, in addition, the formal time  
24       to respond to interrogatories was 15 days, and I note  
25       that in virtually every case it's almost 30 days that

1 he's been given to or he proposes to give himself to  
2 respond, and my submission, again, I don't see any  
3 reason to depart from the normal rule.

4 And, as Ms. Kleer is here as his  
5 representative, perhaps she can indicate why it was  
6 stated or why this is proposed because, as I have  
7 indicated, I don't see any reason to depart from the  
8 normal course.

9 MS. KLEER: I had a previous discussion  
10 with George McKibbin about this because George and  
11 David have worked together on this matter, regarding  
12 the whole way the time frame was set up.

13 My understanding is that they sought to  
14 finish their case -- originally rather, NAN and Windigo  
15 had said they would like to have the last of their  
16 witness statements filed at the end of March. This was  
17 the saw-off point because I understand that MNR had  
18 requested that they would like to have all their  
19 witness statements filed by the end of February, so  
20 March 15th is the date upon which the last witness  
21 statement would be filed.

22 As to the dates for interrogatories and  
23 responses being due, I did not have any discussions I'm  
24 afraid with Mr. Hunter about this. I would, however,  
25 make a comment with respect to the submission relating

1 to the 15-day time period.

2 Having worked with native clients for  
3 some time, the time it takes to get back responses from  
4 the native clients is longer than one would expect with  
5 other clients because of distances, time, and people  
6 not being available to answer when you would like them  
7 to be.

8 I think 30 days is a very reasonable time  
9 frame within which to get responses back to the  
10 interrogatories, and I think that 30-day period should  
11 stand rather than 15 days.

12 With respect to 40 days to submit  
13 interrogatories, I could undertake to say on behalf of  
14 Mr. Hunter, I think fairly safely, that he would have  
15 no problems with a 40-day period inbetween the end of  
16 the filing of the witness statement and the receiving  
17 of interrogatories. We can certainly make that change  
18 if you wish to do so.

19 I think there was some concern as well  
20 that all of the evidence, all of the answers to the  
21 interrogatories should be provided before our case  
22 commenced and, to that extent, we will see that the  
23 last date for responses being due is May 14th, if our  
24 case will begin, as I understand it, in June --

25 MR. CASSIDY: I have no objection to it

1 now that it's been explained in the context of the  
2 responses, Madam Chair, and if I can shorten things up,  
3 I'm grateful to Ms. Kleer.

4 If she's content that the schedule that's  
5 proposed here be changed that the interrogatories will  
6 be due in the normal course within the 40-day period,  
7 subject of course to the proviso that if these  
8 particular dates for filing are -- subject to the  
9 advice of the Board, that if these particular dates of  
10 filing are not met and somehow there's a contraction of  
11 the serving of these witness statements and the rest of  
12 the 10-day period, that the normal rule would also  
13 apply whereby the time for filing would be extended.

14 So I'm grateful to Ms. Kleer if she is  
15 prepared to make those changes.

16 MADAM CHAIR: Ms. Kleer?

17 MS. KLEER: Just to clarify. If we  
18 change the period for interrogatories being due from 30  
19 days to 40 days, I would also like to change the  
20 responses due period to add on another 10 days, because  
21 I think 30 days is a reasonable time within which they  
22 should get answers back from our client.

23 MR. CASSIDY: It is already 30 days.

24 MS. KLEER: No, I know, but if we moved  
25 it up 40 days --

1 MADAM CHAIR: Yes, all the dates would  
2 just change, it would stay 30 days for responses due.

3 MR. CASSIDY: Oh yes.

4 MS. KLEER: Right.

5 MADAM CHAIR: The Board has no problem  
6 with that. Someone will just have to go through this  
7 calendar and move the dates so we can see what it looks  
8 like. I think we can get Mr. Pascoe to do that and  
9 check it with yourself and Mr. Hunter.

10 MS. KLEER: All right, thank you.

11 MADAM CHAIR: Thank you.

12 MR. CASSIDY: Just arising again on that  
13 issue of interrogatories, I'm very grateful to Mr.  
14 Hunter for setting out the proposal. Perhaps what we  
15 might ask Mr. Pascoe to do when he's consulting Mr.  
16 Colbourne about the outline of his evidence is also to  
17 have a proposed date for each interrogatories to be set  
18 out for his various panels, whatever number there may  
19 be.

20 You may recall that OFIA/OLMA, Forests  
21 for Tomorrow, and MNR when they served the witness  
22 statements set out the deadline for interrogatories,  
23 and I know we can all count, but I found it very  
24 helpful to have that deadline set out right in the  
25 covering letters and I'm sure that parties not actively

1 involved in the proceedings probably found it even more  
2 useful when they received the witness statements.

3 So if the parties could be directed to do  
4 that in subsequent filings, and if Mr. Pascoe could be  
5 directed to ask Mr. Colbourne to turn his mind to that  
6 when he sends the outline, similar to the fashion that  
7 Mr. Hunter did, we would probably all be better able to  
8 plan.

9 That also leads me to ask Mr. Reid to  
10 provide us with the same sort of information, if he's  
11 able to do so, in order that we can just then see how  
12 the interrogatory process is going to fly.

13 MR. REID: There is no problem. I can  
14 right next week set out the proposed schedule and I  
15 will send it to the other counsel too.

16 MADAM CHAIR: Thank you very much, Mr.  
17 Reid.

18 MR. CASSIDY: And a couple of other  
19 points.

20 I'm still curious as to whether or not  
21 Mr. Campbell and Ms. Seaborn plan on calling MOE's or  
22 any evidence? We are now some two and a half years  
23 into the hearing and I've had the opportunity to review  
24 the transcripts and Mr. Campbell has stated, and Ms.  
25 Seaborn at various times, that they have not yet made a

1 decision. And I'm wondering if they are any closer to  
2 making that decision, at whatever volume we're at, 250.

3 MR. CAMPBELL: We will have an answer to  
4 that question when we make our submissions on this  
5 whole matter.

6 If there are any further questions to be  
7 addressed, then I have a request that a matter be dealt  
8 with prior to us dealing with that question and the  
9 others raised by the procedural directives.

10 MADAM CHAIR: Do you have anything else,  
11 Mr. Cassidy?

12 MR. CASSIDY: Not at this time. Thank  
13 you, Madam Chair.

14 MADAM CHAIR: Thank you.

15 Ms. Blastorah, did you have anything to  
16 add?

17 MS. BLASTORAH: Well, I have one point.  
18 I simply didn't understand what Mr. Campbell just said.  
19 I may have missed something by not having been here  
20 earlier in the day. Is there some matter that he's  
21 going to be addressing or is he just making a comment?

22 MR. CAMPBELL: No. The matter I wanted  
23 dealt with first was that MNR had indicated that it  
24 intended to oppose any kind of staggered time frame,  
25 then I wondered if in light of the Board Chairman's

1        comments that you have always supported a staggered  
2        time frame approach, whether we were indeed going to  
3        press that position, it makes a difference to my  
4        submissions, and if Ms. Blastorah could address that  
5        matter, it would save me time if I don't have to worry  
6        about it.

7                    MS. BLASTORAH: Well, certainly I can  
8        clarify that right away in order to save time. It was  
9        never our position that we would oppose staggered  
10       service, our position was that there should be some  
11       final ending at which point everybody's material should  
12       be in so that everybody could look at everyone else's  
13       material and, as Mr. Hanna has indicated, he has been  
14       assisted by knowing what Forests for Tomorrow's case  
15       has been up to this point, and it's always been our  
16       position that it would in fact assist everyone if they  
17       knew what everyone else's position was, and that might  
18       facilitate various discussions or whatever to take some  
19       issues off the table or certainly to reduce the  
20       potential for duplication or unnecessary evidence.

21                   And if that was the concern I think --  
22       then I assume Mr. Campbell in reading that comment into  
23       Ms. Murphy's letter, it was certainly my understanding,  
24       having discussed that letter with her, that what she  
25       meant was some final end date by which time everybody

1       should have their written material in so that all  
2       counsel could review it and discuss the appropriate  
3       measures for ensuring that interrogatories were in fact  
4       spread out over a reasonable length of time, and I  
5       think that was discussed on October 10th at the last  
6       meeting of counsel.

7                       Now, I understand that Mr. Hanna wasn't  
8       there and he raised this concern about having  
9       everything served on the last day and the problem with  
10      dealing with interrogatories, and that concern may have  
11      arisen out of the fact that he wasn't at that October  
12      10th meeting, I don't know.

13                     But, in any event, I understood that it  
14      was discussed at that meeting that it would in the  
15      Ministry's opinion -- in the Ministry of Natural  
16      Resources' opinion, be the most expeditious and fair  
17      way to deal with this, to obtain everybody's written  
18      material by a certain point and then for all counsel to  
19      get together and work out a reasonable schedule that  
20      would accommodate everybody's concerns, including  
21      trying to answer their own interrogatories, as well as  
22      posing interrogatories to other people and that would  
23      obviously have to be staggered over some period of time  
24      and relate to the order in which that evidence was  
25      being called.

1                   So if that's helpful, Mr. Campbell.

2                   MADAM CHAIR: I don't think anyone would  
3 disagree that it's a good idea, but I think we've heard  
4 from Mr. Hanna he's not going to have his written case  
5 in before we hear the evidence of NAN, Grand Treaty 3  
6 and OMAA

7                   MR. HANNA: Madam Chair, I'm afraid I'm  
8 the one person in the room, maybe there is others, that  
9 would disagree.

10                  I don't feel that it is a reasonable way  
11 to proceed and I say that for two reasons: First of  
12 all, it's my expectation that our witness statements  
13 will be revised on an ongoing basis and that they  
14 will -- that was my point about them being targeted  
15 and focused as much as possible. It was my intent to  
16 avoid introducing any evidence that would be repetitive  
17 and unnecessarily redundant of evidence which you have  
18 already heard, but I feel is adequate for the case that  
19 we wish to make.

20                  The spectre that it raises is submitting  
21 a series of witness statements by various parties and  
22 simultaneously seeing what the other witness -- other  
23 panels, or the other parties are proposing and, hence,  
24 saying: Well, I've got to change my witness statement  
25 to respond to that and whatever, and so you're through

1 a whole series of iterations of submissions of witness  
2 statements and I don't feel it's productive in terms of  
3 use of resources and time or in terms of the hearing  
4 itself.

5 The other matter that I would draw to the  
6 Board's attention is that the Federation has submitted  
7 what, in my view, is a comprehensive and extensive  
8 description of the case that it's going to put forward  
9 in its terms and conditions. There is no surprises.

10 The Ministry of Natural Resources knows  
11 and has known for many months, maybe I can even say  
12 years, where the Federation is coming from, it's  
13 clearly set out, and I don't see any advantage  
14 whatsoever for the Ministry to have -- in preparing  
15 interrogatories, to have any further explanation at  
16 this time.

17 There may be refinement and whatever, but  
18 the basic essence of the Federation's case is set out  
19 clearly at this time, and I can't imagine it's going to  
20 help them in any way whatsoever.

21 MADAM CHAIR: Thank you, Mr. Hanna. I  
22 think that from the Board's point of view the  
23 intervenors we will be hearing from, with the exception  
24 of the OFAH, the intervenors that we will be hearing  
25 from have very clearly defined interests, obviously the

1 interests of the native communities, the interests of  
2 the remote tourist operators, the interests of some of  
3 the very small organizations we will be hearing from.

4 The Board wouldn't expect that there  
5 would be a lot of duplication among those parties.  
6 Where there will be duplication will be in your case  
7 because you have looked at all the evidence, you've  
8 looked at the overall extent of MNR's case, where I  
9 think the other parties have focused in on areas that  
10 are very specific to their interests.

11 So I guess the Board is still up in the  
12 air and we are going to have to give this some thought  
13 as to how much any of us will benefit from some  
14 deadline, as we had anticipated earlier, for all the  
15 parties cases to be submitted in written form. I don't  
16 know if that's going to be helpful or possible, and I  
17 think we will just leave it at that for this evening.

18 MS. BLASTORAH: If I could just make one  
19 comment to distinguish Mr. Hanna's position, as I think  
20 I understand it, from that of my client which is: The  
21 Ministry is in the position of having to respond as the  
22 proponent to all of these other cases, and I think that  
23 puts the Ministry in a different position than the  
24 individual parties who are here simply to put forward  
25 their interests and are not necessarily in the same

1 position with regard to the cases of other parties.

2 And I think it certainly is helpful to  
3 the Ministry in terms of trying to deal with sometimes  
4 conflicting or certainly very different views in  
5 relation to the same matter, to have all of that  
6 evidence before it so it knows exactly what it's  
7 dealing with in trying to respond to sometimes opposing  
8 views in relation to the same manner.

9 So I would just make that distinguish  
10 when the Board is considering --

11 MADAM CHAIR: The Board will weigh that  
12 against the burden to the intervenors and decide what  
13 to do about it.

14 Mr. Campbell, did you have something you  
15 wanted to say?.

16 MR. CAMPBELL: Certainly did. On the  
17 latter point --

18 MADAM CHAIR: Oh, excuse me, Mr.  
19 Campbell. One moment, please.

20 ---Discussion off the record

21 MADAM CHAIR: We are going to have to  
22 take a short break -- a five-minute break, Mr.  
23 Campbell. Sorry to stop you before you begin.

24 MR. CAMPBELL: It's all right.

25 MADAM CHAIR: We'll be back in five

1 minutes.

2 ---Recess taken at 5:10 p.m.

3 ---On resuming at 5:20 p.m.

4 MADAM CHAIR: Please be seated.

5 Mr. Campbell?

6 MR. CAMPBELL: Thank you, Madam Chair.

7 And I would like to thank Ms. Blastorah  
8 for the clarification on page 2 of the letter. We had  
9 taken the last section of the second indented point on  
10 page 2 of the letter of November 6th as meaning what it  
11 said; that is, that MNR would oppose any request which  
12 would have the result of submission from parties on a  
13 staggered time frame, and I take it that the kind of  
14 staggered time frame that you spoke of and has been  
15 contemplated and is now not a problem, and that is a  
16 helpful clarification.

17 With respect to -- perhaps I will deal  
18 with negotiations at the conclusions of my remarks.

19 Really in response to this matter being  
20 raised -- or the suggestion from MNR that perhaps the  
21 Board should convene a meeting and deal with the  
22 question of the filings to be done on behalf of all  
23 parties really precipitated MOE to make a decision at  
24 this time, although we felt it could have been delayed  
25 a little longer, but it precipitated us making a

1 decision at this time and receiving instructions to  
2 call a case and, in accordance with the Board's  
3 instructions in the procedural directives, we have  
4 prepared a short memo which outlines various matters in  
5 relation to that case. And perhaps I could distribute  
6 that now and then speak to it. (handed)

7 MR. FREIDIN: Do you have any extra ones?

8 MR. CAMPBELL: I have one.

9 MS. SEABORN: (handed)

10 MR. CAMPBELL: We propose to call one  
11 witness panel and the document that I have presented to  
12 you speaks to the matters be covered.

13 As I say, it's one witness panel. In  
14 terms of number of witnesses, it's anticipated that we  
15 will call three expert witnesses on the one panel; one  
16 will be a registered professional forester with  
17 experience in the boreal forest, the second witness  
18 will be an environmental planner, and our last witness  
19 will be a biologist.

20 The issues to be addressed as part of the  
21 request under the procedural directive, and the Board  
22 will recall that we filed our terms and conditions in  
23 accordance with the Board's original order, they were  
24 filed on September 28th and they were presented in such  
25 a way that all of the changes to MNR's proposed terms

1 and conditions were put in bold in that filing.

2 So that MOE's evidence of course will  
3 address the issues highlighted in the terms and  
4 conditions, with particular emphasis on four matters  
5 that I would like to address.

6 First, the timber management planning  
7 process and, in particular, silvicultural prescriptions  
8 for normal operating areas and documentation  
9 requirements for areas of concern.

10 Second, the whole question of  
11 environmental effects, and we will have some particular  
12 emphasis in that area on water quality and nutrient  
13 depletion concerns.

14 The third, the need for timber management  
15 plans to be understandable, to provide the rationale  
16 for the decisions and proposed activities contemplated  
17 by the plan, and to provide for traceability,  
18 particularly between the activities proposed and  
19 environmental effects.

20 We will also address any particular  
21 requirements for monitoring in both normal operating  
22 areas and areas of concern, including monitoring of  
23 deviations from implementation manuals.

24 I suspect that anyone who has reviewed  
25 our terms and conditions or read our various statements

1 of issues and listened to cross-examinations would --  
2 none of those topics would be any surprise at all.

3 Now, the Board will recall that at the  
4 outset of the hearing the Board ruled that MOE would  
5 present its evidence following those parties in  
6 opposition to the undertaking, and that the Board's  
7 procedural directives of April 19th, 1990, June 28th,  
8 1990 did not address the timing of the filing of MOE's  
9 evidence.

10 We are accordingly making a submission  
11 that given our position in the case and given the  
12 orderly flow of the development of the evidence, that  
13 we be required to file our evidence two months  
14 following the filing of the OFAH last panel of  
15 evidence, and whatever date that works out to, that's  
16 fine.

17 The Board will, I assume, be trying to  
18 blend these together in some way. We believe that  
19 that's a practical time frame. I'd like to say, just  
20 in light of having received instructions just recently  
21 on this matter, I think if we are given that kind of  
22 time deadline, you can be confident that we will show  
23 our usual vigilance in meeting time deadlines, I think  
24 with one or two notable exceptions; one of which I  
25 particularly recall where we have been careful to meet

1 time deadlines and we will continue to do so, so that  
2 in terms of your concern to have a specified set sort  
3 of path to the end of the hearing, we can meet that  
4 kind of time deadline and undertake to do so.

5 We have -- clearly in this kind of flow  
6 there is no prejudice to any other parties in that kind  
7 of timing. Our terms and conditions, as I say, have  
8 been filed and if all parties in understanding of our  
9 position, and we have an open invitation to all parties  
10 to sit down and discuss any concerns they have with  
11 those terms and conditions; we have in that respect had  
12 an occasional meeting with MNR and we have met on a  
13 more regular basis with OFIA to try and make sure the  
14 rationale behind some of the terms and conditions was  
15 well understood and that, of course, is entirely  
16 outside the overall negotiation process that was  
17 carried out.

18 MADAM CHAIR: Mr. Campbell, is it your  
19 intention to make any comments about the environmental  
20 assessment process as it has applied to the timber  
21 management hearing?

22 MS. CRONK: Tonight or -- sotto voce,  
23 Madam Chair, it wasn't intended. It was just, did you  
24 mean that tonight or in the course of evidence?

25 MADAM CHAIR: No, I didn't mean it

1        tonight, I meant when the Ministry presents its case.

2                    MR. CAMPBELL:    Usually when counsel  
3        receive invitation to address a matter, they take that  
4        invitation very seriously when it comes from the panel.  
5        I'm not at all clear whether this is an invitation, but  
6        we had intended to focus our evidence on the merits of  
7        this case as opposed to the process of this case.

8                    Should we receive an invitation to the  
9        contrary, we will however -- to go beyond our original  
10       intention, we will give the matter careful and serious  
11       consideration and make a decision and advise you.

12                   MADAM CHAIR:    We simply raise that matter  
13       because obviously in the Board's decision we will be  
14       making our own observations and drawing our own  
15       conclusions about the environmental process and how  
16       it's been applied and worked through in this hearing  
17       process, and I assume that other parties might want to  
18       address issues like that, and I would think your client  
19       would be particularly interested, and I am simply  
20       putting that out.

21                   MR. CAMPBELL:    We clearly have a  
22       particular interest in the matter and I would certainly  
23       welcome the Board's views.

24                   MADAM CHAIR:    You will be receiving the  
25       Board's views.

1                   MR. CAMPBELL: As to other issues raised  
2     in the Board's procedural directives, with respect to  
3     interrogatories, we believe that the kind of schedule  
4     that is set out in Mr. Hunter's letter should be worked  
5     out right through this whole filing schedule, once you  
6     have all the information, and our recommendation is  
7     that once you have got all the dates and they are all  
8     on a piece of paper, that Mr. Pascoe be asked to kind  
9     of smooth it through so that the workload on all of the  
10    parties, including ourselves, on all of the parties has  
11    some kind of even flow, because there is clearly going  
12    to be overlapping periods of reviewing evidence,  
13    submitting interrogatories, next evidence coming in,  
14    and that that should be sort of spaced out in as smooth  
15    a flow as can reasonably be accommodated in order to  
16    make the management of the workload more easily  
17    accommodated.

18                  MADAM CHAIR: We will instruct Mr. Pascoe  
19    to do a master calendar of all the dates for all the  
20    cases left.

21                  MR. CAMPBELL: And if you felt it  
22    appropriate, it might be useful if you reviewed that on  
23    an informal basis with the parties affected so that any  
24    potential glitches can be worked out informally rather  
25    than having to come back before the Board.

1                   Now, the Board in its procedural  
2 directives raised this matter of funding, and I'm not  
3 quite clear what you had in mind, but I have taken from  
4 your comments today that in this wish to look from now  
5 to the end of the case, if there's going to be a  
6 funding issue raised, it should be raised now and from  
7 now to the end of the case.

8                   And if I understand that correctly, I  
9 think even a more preliminary estimate from MNR as to  
10 what its reply evidence intentions were in terms of  
11 time is necessary to that process, and if OFIA is able  
12 to say now, based on what it has heard so far, whether  
13 it has any intention to request the limited right of  
14 reply which has been spoken of, then that would be  
15 helpful too. But it seems to me there is no point in  
16 doing this twice on the basis of incomplete  
17 information, given that the Board is looking right  
18 through to the end.

19                   So those are questions you may wish to  
20 ask of MNR and OFIA, assuming that anything can be done  
21 in this area. I do not make that assumption.

22                   With respect to the negotiations, I guess  
23 all I would say is that MOE has throughout this process  
24 and continues to encourage that as many matters as  
25 possible can be settled. I think that does put an onus

1 on the parties when they file their terms and  
2 conditions, according to the extended deadline now, to  
3 be as clear as they can in what they are asking this  
4 Board to approve, and certainly speaking on behalf of  
5 MOE, we have stood ready to explain the rationale  
6 behind those and whatever details required or to listen  
7 to whatever alternative suggestions might come back  
8 from other parties in light of the particular problem  
9 that's being addressed, and I trust that spirit can be  
10 shared amongst all the parties, and that that process  
11 really can proceed quite independently and in parallel,  
12 particularly once the terms and conditions are all  
13 filed.

14 I think there were a number of other  
15 matters that I was prepared to address, but I think  
16 they have basically been covered in what's been talked  
17 over through the course of this meeting since four  
18 o'clock.

19 I think there are just two principles I  
20 would like to emphasize in setting time frames. We  
21 support and wholeheartedly encourage the Board to both  
22 request and insist on realistic time frames with  
23 realistic dates and, having done that, make it clear to  
24 parties that they now can't come back again and say  
25 they can't do it in the time frames that they suggested

1 to you. I think this time when you set them let's do  
2 it right, do it once, set them and that is it. We need  
3 for -- everybody needs for planning purposes at path  
4 through to the end of this hearing.

5 Secondly, we endorse fully, and I will  
6 put it in a slightly different way, that the emphasis  
7 in all parties' evidence coming up, including MOE's  
8 evidence, must be on quality not quantity and, in  
9 saying that, there is a natural process in a hearing  
10 that issues which in the end are the important issues  
11 become clearer and more identifiable as the hearing  
12 proceeds and, in our submission, both ourselves and  
13 other parties should focus more tightly on those issues  
14 which, given where we are now in the hearing, we all  
15 have begun to see are the important issues at the end  
16 of the day, and we encourage the Board's request to  
17 focus evidence in that way and to support it entirely.

18 And unless there are any questions for  
19 us, those are all the matters I wish to address.

20 MADAM CHAIR: Thank you, Mr. Campbell.  
21 One question. You will be filing your evidence at  
22 which point during the OFAH's case?

23 MR. CAMPBELL: What we would suggest is  
24 that we file two months following the filing date of  
25 OFAH's last panel, so that it will be available, I

1 would expect then, either before or during OFAH's  
2 evidence.

3 MADAM CHAIR: The date of the last panel.  
4 And then you would present your evidence to the Board.

5 MR. CAMPBELL: At some point following,  
6 whenever it was convenient, obviously just prior to  
7 reply was the time that we had been given. There may  
8 be some travelling or other matters towards the end,  
9 and you can deal with that scheduling in whatever way  
10 is convenient.

11 The reason we make the suggestion for  
12 that particular time of two months after OFAH's, it  
13 really reflects a view that the Board expressed very  
14 early in these proceedings, and it can be found at page  
15 149 of the transcript, and we assume that the wisdom in  
16 these remarks remains with the Board, even though they  
17 came from the then Chairman, Mr. Jeffery.

18 And the comments were that:

19 "It is the Board's view that these  
20 proceedings will be better served by the  
21 Ministry of the Environment having the  
22 opportunity to evaluate its position in  
23 light of the evidence given by those in  
24 support of and in opposition to this  
25 application."

1                   And that obviously is something that the  
2     Board made a finding on on those pages, and we see no  
3     reason to revisit that question, and that's the reason  
4     for the two-month period between OFAH's last panel,  
5     which is, I understand it, a planning panel, a matter  
6     of particular interest to us, we will then whack from  
7     our case everything that we don't feel -- that we feel  
8     has been adequately addressed by others and filed. And  
9     that is the reason for the time.

10                  MADAM CHAIR: Thank you, Mr. Campbell.

11                  MR. FREIDIN: Just one question. When  
12     you say two months after the last -- second last OFA  
13     panel...?

14                  MS. CRONK: OFA?

15                  MR. FREIDIN: OFAH. Was that calling of  
16     the evidence on that panel, or the filing of the  
17     witness statement?

18                  MR. CAMPBELL: I think I was quite, the  
19     filing of the witness statement with respect to the  
20     last panel.

21                  MR. FREIDIN: Thank you.

22                  MR. CASSIDY: I don't know whether -- in  
23     fact, perhaps Mr. Campbell can confirm whether or not  
24     he's aware that in setting that schedule, NOTOA is  
25     scheduled to go after the Anglers & Hunters, and I'm

1 not aware of what their time frame is. Their letter  
2 doesn't appear to indicate -- their letter of November  
3 21, unless I've missed it. If Mr. Campbell can confirm  
4 that he's aware of that.

5 MR. CAMPBELL: I'm quite aware of that  
6 and I think we can have -- we're sufficiently in  
7 contact with NOTOA that I don't think that should be a  
8 problem. I believe we are quite comfortable that that  
9 two-month period gives us adequate time to accommodate  
10 that.

11 MADAM CHAIR: Do you have any  
12 understanding from NOTOA of how long their case will  
13 take, Mr. Campbell?

14 MR. CAMPBELL: No, I don't.

15 MADAM CHAIR: We will be in touch with  
16 NOTOA ourselves.

17 Mr. Hanna?

18 MR. HANNA: Madam Chair, through you I  
19 would ask for one point of clarification on Mr.  
20 Campbell's submissions.

21 He had spoken about negotiations being an  
22 ongoing process and I wanted to get clarification as to  
23 whether the Ministry was in support of having a  
24 negotiation session of the nature that we've had in the  
25 past, or whether he was proposing that it should be an

1 informal process that be done on, rather than all  
2 parties simultaneously, on a one-to-one basis. And I  
3 think that is important.

4 My client is willing to enter into  
5 another multi-party negotiation process with the  
6 caveats that I've given.

7 MR. CAMPBELL: We are willing to sponsor  
8 any negotiation process that will shorten this hearing  
9 and bring matters to an agreed conclusion and focus the  
10 issues more tightly.

11 That process, we have had one big formal  
12 round of that, and we have been clear that certainly in  
13 terms of the kind of concerns that we have in this  
14 case, we're quite willing to see that continue on an  
15 individual basis and, if the parties, if there's a  
16 general feeling amongst the parties that another larger  
17 session would be useful once we have all the terms and  
18 conditions, we'll be pleased to sponsor it.

19 MADAM CHAIR: Thank you.

20 MR. CASSIDY: Madam Chair, a final  
21 comment with respect to Mr. Campbell and Ms. Seaborn's  
22 proposal. This is the first time, the first day we  
23 have ever seen this and, as a result, we are going to  
24 need time to review it with our client and consider it.  
25 The one thing that really springs to mind is the

1 proposal in terms of the filing date, that we just want  
2 to have time to consider, and what I propose to do is,  
3 as I understand, there's going to be a meeting on  
4 November 30th to work out some of these specific dates  
5 with Mr. Pascoe. I propose that we have conversations  
6 with Mr. Campbell and Ms. Seaborn about this proposal  
7 between now and then, see what we can do to resolve any  
8 differences we might have, if any, so that we can back  
9 to the Board to make submissions in respect of this.

10 I think we can work things out in terms  
11 of the proposal, but I need time to review it with our  
12 client.

13 Those are all my comments.

14 MADAM CHAIR: Thank you, Mr. Cassidy.

15 MR. CAMPBELL: We welcome OFIA's  
16 submission on our case. Our timing is simply in the  
17 normal course of the flow of this thing, given the  
18 position as to when we will be calling the case and I  
19 don't think it's a very complicated matter.

20 MADAM CHAIR: Thank you, Mr. Campbell.

21 Mr. Lindgren?

22 MR. LINDGREN: Thank you, Madam Chair.

23 In light of the hour I will be extremely  
24 brief, in fact I think I can be a minute and 30  
25 seconds, starting now.

1 MR. HANNA: Ding!

2 MR. LINDGREN: On the issue of the  
3 intervenor funding it would appear, Madam Chair, at  
4 this point that we do have adequate intervenor funding  
5 to complete FFT's case, that does not appear to be a  
6 difficulty at this point, however, the picture with  
7 respect to our continued participation beyond our own  
8 case is somewhat less clear and quite frankly, Madam  
9 Chair, there may well be a need to apply for further  
10 intervenor funding to ensure our continued  
11 participation.

12 And as Mr. Campbell has properly  
13 identified, the need for further intervenor funding is  
14 directly dependent on the nature and extent of the  
15 reply evidence to be adduced by the MNR and possibly by  
16 the OFIA and I agree with Mr. Campbell's point that  
17 before we can have any further meaningful discussion on  
18 the issue of intervenor funding, we will have to get  
19 some indication from both or either of those parties as  
20 to the nature and extent of their reply case.

21 Secondly, and finally, with respect to  
22 the negotiations of terms and conditions, FFT is  
23 prepared to negotiate formally and informally with  
24 respect to these terms and concerns. If formal  
25 sessions are to be commenced again, I adopt Mr.

1 Hunter's submissions on page 4, I believe, of his  
2 letter which is that there should be firm and fixed  
3 deadlines for a negotiation process and that the  
4 parties at the negotiation table should be in a  
5 position to adopt and confirm positions.

6 And that is my minute and 30 seconds.

7 MR. FREIDIN: Minute and 36 seconds.

8 MR. LINDGREN: Thank you.

9 MADAM CHAIR: Thank you, Mr. Lindgren.

10 MS. KLEER: Madam Chair, if I may --

11 MADAM CHAIR: Yes, Ms. Kleer.

12 MS. KLEER: Just to preserve the rights  
13 of Nishnawbe-Aski Nation and Windigo Tribal Council, I  
14 note that Mr. Hunter's letter does address the issue of  
15 intervenor funding and I understand this panel can't  
16 make a decision on that, however, I would like to say  
17 that I would like to leave open the option of Mr.  
18 Hunter providing submissions to the funding panel if  
19 that becomes necessary, I know that the funding is  
20 limited, and I would also agree with Mr. Lindgren that  
21 it would depend a great deal upon the nature and extent  
22 of the reply evidence, as to whether we need further  
23 funding.

24 MADAM CHAIR: Thank you, Ms. Kleer.

25 The Board certainly appreciated the fact

1 that issues of intervenor funding, we're looking at it  
2 today from the viewpoint of parties presenting their  
3 evidence. Obviously there are other matters related to  
4 intervenor funding that will affect each party  
5 differently and will depend on how much longer this  
6 hearing goes on.

7 Mr. Freidin, did you want to say anything  
8 about reply evidence?

9 MR. FREIDIN: I can't estimate it at all.  
10 Just really, it would be just a wild guess and it would  
11 be misleading to anybody for me to suggest an amount of  
12 time.

13 MADAM CHAIR: What's the longest time  
14 reply evidence ever took at a hearing, just give it to  
15 me, what is the longest time that's on record in  
16 history?

17 MR. FREIDIN: Well, I'm not cognizant of  
18 all the hearings that have taken place.

19 MS. CRONK: Ten weeks, that I'm aware of,  
20 Madam Chair.

21 MADAM CHAIR: Ten weeks, Ms. Cronk?

22 MS. CRONK: That I'm aware of.

23 MADAM CHAIR: Well, that's not bad. Do  
24 you think it would be more than ten weeks, Mr. Freidin?

25 MS. BLASTORAH: Bearing in mind this

1 hearing is much longer than most.

2 MR. FREIDIN: Anyway, thank you.

3 MADAM CHAIR: The Board has one more  
4 question and it's just going to put out to the parties,  
5 and this is a scheduling matter, and we have left to  
6 the end of this hearing the matter of a satellite  
7 hearing in New Liskeard and the North Bay area, and  
8 when we started this hearing, as you will recall, the  
9 issues affecting Temagami were very complicated and  
10 receiving a great deal of public attention.

11 We don't know where we stand with respect  
12 to parties who may be pursuing some interest in the  
13 Temagami issue and might want to appear in New  
14 Liskeard, we have no idea, and we don't know if we are  
15 going to be spending any time there at all.

16 Does anyone have information about --

17 MS. BLASTORAH: I don't have any  
18 information, Mrs. Koven, but I do know that Mr. Pascoe  
19 had sent out a letter asking any part wish to call  
20 evidence to identify themselves, and I was just  
21 wondering - I'm not aware whether he heard from  
22 Northwatch at all. I had understood they iniitially  
23 indicated that's where they wanted to call their  
24 evidence.

25 MADAM CHAIR: Well, if any of the

1 parties - and, Mr. Lindgren, I might direct this to you  
2 as well - if any of the parties have information or can  
3 obtain some in the next week or two, we would  
4 appreciate it, and we will be making our own inquiries  
5 as well.

6 Perhaps we won't be spending much time in  
7 New Liskeard, but obviously we are cognizant of the  
8 fact that if the issue is one that's very contentious  
9 and there's some evidence parties want to present  
10 before us, then we don't know how long that part of the  
11 hearing would take.

12 MR. FREIDIN: Mr. Greenspoon called me  
13 the other day - I haven't had a chance to get back to  
14 him - so I should be speaking to him before the end of  
15 the week - it maybe on this issue, and if I get any  
16 information I'll advise the Board.

17 MADAM CHAIR: Thank you very much, Mr.  
18 Freidin.

19 MS. BLASTORAH: And just for  
20 clarification, when I said -- when I mentioned  
21 Northwatch, I meant they had initially indicated North  
22 Bay not New Liskeard.

23 MADAM CHAIR: Thank you.

24 All right. The Board thanks you very  
25 much for this, and Mr. Pascoe will be doing some work

1 to organize schedules and so forth.

2 I don't know if we'll be issuing anything  
3 before your November 30th meeting, but Mr. Pascoe will  
4 certainly get something in the mail with respect to all  
5 the deadlines, and if anything comes to mind after this  
6 meeting, please get in touch with the Board.

7 Thank you.

8 ---Whereupon the hearing adjourned at 5:50 p.m., to be  
9 reconvened on Thursday, November 22nd, 1990,  
commencing at 9:00 a.m.





